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The University of New Brunswick

LAW SCHOOL

SAINT JOHN, NEW BRUNSWICK

COURSES LEADING TO A B.C.L.

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EVIDENCE

Editorial Comments

We take great pleasure in extending to the Hon. Mr. Justice A. T. LeBlanc our felicitations on his twenty-fifth anniversary as a member of the Supreme Court of the Province, and to Mr. A. N. Carter, K.C., who has recently been elected President of the Canadian Bar Association.

Mr. Justice LeBlanc has had a notable career both as a member of the New Brunswick Bar and as a Judge. Admitted to the Bar in 1900 His Lordship practiced law in Campbellton until 1924 when he was appointed to the King's Bench Division of the Supreme Court. In his twenty-five years on the Bench he has distinguished himself as a master of the law. Indicative of his capabilities is the fact that of the many cases which he has heard and which have gone on appeal to the Privy Council in England none has ever been reversed. Mr. Justice LeBlanc in common with his brothers on the Bench during these last few years has been called upon to do a tremendous amount of extra judicial work due to the illnesses and deaths of two or three members of the Bench. However, the extra burdens of work and the inevitable advance of age have in no way impaired his physical or mental powers. Devoted to his Province and especially to his Acadian ancestory, Mr. Justice LeBlanc has been deeply interested all his life in the cultural activities of the Province. It is our sincere hope that Mr. Justice LeBlanc will have many years ahead of him to continue his notable service to the Province of New Brunswick.

Mr. A. N. Carter, who has for a number of years been one of our most prominent members of the Bar, was educated in Saint John schools and was awarded a Rhodes Scholarship after attending the University of New Brunswick. He received his degree of Bachelor of Civil Law at Oxford and returned to Saint John, where he was associated with the firm of Weldon and MacLean and later became a partner in the firm of Baxter, Lewin and Carter. Mr. Carter's long years of notable service to the Bar of Canada have been justly rewarded with his election in September last to the Presidency of the Canadian Bar Association. The legal profession of this Province has certainly been greatly honoured and is justly pleased with Mr. Carter's choice. We of the Law School are particularly proud of the fact that the new President of the Canadian Bar Association has for a number of years been a lecturer here at our Law School.

Two of our law students, Vernon Copp and Harold Stafford, have been chosen from amongst six contestants to represent the Law Faculty of the University of New Brunswick in a debate with McGill University on the 26th of January, and with Osgoode Hall Law School, Toronto, on the 28th. Our congratulations to them and best wishes.

THE LATE JUDGE JOHN A. BARRY

The death of John A. Barry, Judge of the Saint John County Court, which occurred on New Year's Day has deprived the legal profession in New Brunswick of a capable and conscientious member. Admitted to the Bar in 1907, and appointed to the Bench in 1923, Judge Barry had spent a long life distinguished by faithful service to his profession and to the community. Indicative of the affection and esteem in which Judge Barry was held, were the many tributes paid to him by people in all walks of life. As a diligent jurist, and a loving father, he will be sincerely mourned by the Bar and by his family.

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UNIVERSITY OF NEW BRUNSWICK LAW SCHOOL JOURNAL

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MESSAGE FROM U. N. B. PRESIDENT

It is a great pleasure for me to have this opportunity of sending a brief message to the Journal of the University of New Brunswick Law School.

In an address which I had the honour of giving before the Barristers' Society of New Brunswick last spring, I made the point that we need a better attitude on the part of the general public to the Law, a better understanding of what the Law means in modern society. Part of the responsibility for creating this attitude and this understanding rests with the profession itself. May I quote an extract from the address to which I have referred:

"Nothing can be more important to the life of a Province like this, than a legal profession of sound learning and unchallengeable probity. I suppose that the large majority of lawyers are not those resplendent creatures who in association with large corporations gain incomes which run into six figures. I'm not thinking much about them, I'm thinking about the students who go out from our Law School in Saint John to take up professional work in the small cities, towns and villages of New Brunswick. What important people they are going to be in the life of the communities where they settle! How important it is that they be well trained for the job they have to do, because the majority of them will not have the opportunity to do further work at Harvard or elsewhere. How influential for good they can be, if they have, in addition to their technical knowledge, some philosophical conception of the nature of Law, of the purpose and function of Law in organized, democratic society; and if they have, or gain, some sympathetic insight into the nature of the problems which confront ordinary folk, and are able to demonstrate that the Law is not inhuman and monstrous, but protective and, as it were, life-giving.

What I am suggesting is the need for keeping the profession humanized, or of humanizing it more, where it needs it. In other words, I am suggesting the need, in this profession as in all professions, of approaching even routine tasks with saving imagination, with some perception of the long-range significance of what one is doing. It is in this way, and this way only, that a man can give himself a broad base on which to stand, and can support with dignity as well as efficiency, his membership in a great profession."

On behalf of the University of New Brunswick as a whole, I extend greetings to the students of the Law School, and best wishes for success in the profession which they have adopted.

A. W. TRUEMAN, *President.*

SEMINARS—A METHOD AND A PURPOSE

During the school year of 1948-49 a sizeable number of Law students discovered that the most satisfactory way of learning law was to talk it over together. On the basis of this realization, many of us took part in "bull sessions," or "jam sessions," or if you wish, discussion groups or seminars. The great advantage of participation in such groups is that one is either compelled to explain a particular point of law or one must be able to frame an intelligent question thereon. This kind of learning is undoubtedly a luxury. Nevertheless, it is a useful luxury, because it enables the earnest student to fix firmly in his mind the point of law which he is called upon to discuss.

In the fall of 1949 a majority of the students decided that the proper manner of handling these discussion groups was to set them up on a formal, but voluntary, basis. This would be an adaptation of the Oxford tutorial system. The innovation of this method of learning law would require the expert guidance of a member of the Faculty rather than trusting to the hit-or-miss leadership of a student.

The approval of the introduction of the seminar system at the Law School was sought. The Faculty not only approved but showed great enthusiasm for the scheme. Their attitude is greatly appreciated by the students. Although, as yet, few seminars have been held, joint committees of the Faculty and the students are planning ten or twelve discussion sessions. Thus, the academic year of 1949-50 may provoke more pertinent legal discussion on the part of the students than has ever taken place heretofore within the precincts of the Provincial Building.

LAW TEACHING IS CRITICIZED

Dr. Karl N. Llewellyn Betts, Professor of Jurisprudence at Columbia University, in a recent issue of the Duke University Law School Journal of Legal Education has sharply criticized the case system method of teaching in law schools.

Professor Llewellyn particularly criticizes the practice of some teachers in furnishing a court's decision along with the problem presented for study. This method of "approaching the case from the rear can jeopardize and even defeat the possibilities of case teaching by focussing attention on the answer to the problem rather than on the techniques of solution."

Professor Llewellyn declares: "The case system can be directly vicious on the point of acquiring needed information about the state of the rules of law, because the effect over three years of limiting a student's required reading substantially to fifteen or so pages a day—conveniently collected in a single book—is to discourage that very habit and skill of independent outside reading and searching which is one major part of every professional man's equipment."

The Columbia professor recommends that law students approach case studies as "problems for solution" and not as problems already solved.

He goes on to say that every case studied is a direct exercise in "living law." The student is then given experience in dealing with "an essential problem which the prospective lawyer will face in his life-work— the persuasion of a court to reach the desired answer in a new case as yet undecided."

In reviewing the curricula of American law schools, Professor Llewellyn reports that "in the main we find neither advocacy nor the technique" of handling statutes, "the arts of simple counselling" and drafting of legal documents.

"Yet each of these fundamental arts of the legal craft is an art with principles, well practised among the better lawyers of the country."

Failure to provide a "broad approach to the social and political implications as well as to the responsibilities of the lawyer-to-be, and to develop "a whole view of the law and what law is for," Professor Llewellyn asserts, constitutes "a major gap in legal training."

NEW BRUNSWICK BARRISTERS' SOCIETY ANNUAL

The annual meeting of the New Brunswick Barristers Society was held on June 23, 24, 25, at St. Andrews (by-the-Sea). For the second consecutive year the attendance was limited due to the then pending election. In 1948 the Provincial election had restricted the attendance. Nevertheless the meeting established a precedent with the comparatively large number of younger practitioners who were able to attend, as well as the wives and families of many of the barristers.

The annual meeting has changed in the past few years from a one-day business session into three days of mixed business and social meetings attended by both lawyers and their families. This change has been highly praised by the members of the Society.

The social events were carried out at the Algonquin Hotel and the highlight of the second afternoon was the annual Barristers' Golf Tournament. Mr. Earl T. Caughey of St. Andrews, was the winner of the Society Golf Cup for 1949.

The first day was taken up by the meeting of the Barristers Council, at which the President, J. H. Drummie, K.C., presided. The annual report and items to be placed on the agenda for consideration by the Society as a whole were considered by the Council.

The first general meeting of the Society started on the morning of the 24th, with the President in the chair. The routine reading of the Minutes and the acceptance of the Treasurer's report were summarily dealt with. Arising from the Minutes was the report of a special committee on Conveyancing Standards.

M. G. Teed, the chairman of this committee, presented the report which showed how the committee had during the past year endeavoured without success to have the Provincial Government raise the standards required to enable a person to draw deeds and do other conveyancing work. Under the present system a Justice of the Peace may do conveyancing and sometimes regrettably his knowledge of legal conveyancing is not sufficient to enable them to draw a proper conveyance. It was recommended that a system of licenced conveyancers be established in the Province in lieu of the unsatisfactory methods now in operation. As a result the committee was authorized to continue their efforts to have their recommendations acted upon.

Another item which received special consideration was the recommendation of the Council that Grand Juries be abolished. In view of a proposal of establishing a system of County Magistrates and the effect this might have, the recommendation was left over for further study.

The most contentious point in the whole meeting arose from the report of Mr. A. B. Gilbert, K.C., chairman of a special committee on Admissions of Students-at-Law. The committee recommended that a higher standard of admission for both students-at-law and barristers be established. In order to achieve this it recommended that a B.A. or a B.Sc. degree from an approved University be the minimum requirement for admission as a student-at-law. Many felt that such a standard was useless and that it would tend to keep students out of law, in presenting a financial barrier to them. The admission requirements of the other Provinces were reviewed and discussed and it was pointed out that with the exception of Ontario the minimum standard was two years of University, or the equivalent. Some felt that this was an adequate pre-law course. On the other hand, some felt that four years at University should be a requisite for any lawyer in order to train him to take his place not only as a *Barrister, but as a leader of the community.* The debate on the report was adjourned until after the annual election. The election over, the controversy was continued. After a lengthy discussion the Society adopted the committee's report in principle and authorized the Council to draw up a proposed set of regulations for further study by all the members.

The annual election resulted in A. B. Gilbert, K.C., being unanimously elected as President and J. A. Pichette being elected as Vice-President. The Secretary-Treasurer, A. McF. Limerick was again returned to office, and the seven members of the Council were elected.

The Annual Dinner was held Friday evening, June 24. Dr. A. W. Trueman, President of the University of New Brunswick, was the guest speaker. His timely talk on "the advantage of a general education to the lawyer" centered around the need of a humanistic and stimulated approach to even the most routine tasks. According to Dr. Trueman, a lawyer must have in addition to his technical knowledge, a general background of the philosophical conception of the value of law, of the purpose and function of law in organized society and an insight into the problems which confront other people.

The final meeting was held Saturday morning with A. B. Gilbert, K.C., in the chair. Several new items were brought up and discussed. Mr. D. G. Willet, the New Brunswick Representative on the committee on Administration of Civil Justice for the Canadian Bar Association, was asked to form a Provincial committee on the same subject.

To further assist the efforts of the editors of "Oyez Oyez," (the Law School Journal), and the Bar Review, the Society established a special publication committee. A grant was also authorized for the Journal. It was pointed out that there is a growing interest in legal publications and that the members of the New Brunswick Bar in future would be expected to participate to a greater extent than they had in the past.

The Society granted a further $600 for the restoration of the Inns of Court in England in reply to the general appeal that has gone to the Bar Societies throughout Canada.

Following the annual meeting a brief meeting of the newly-elected Council was held. J. A. Pichette was named the New Brunswick representative on the Council of the Canadian Bar Association, and J. E. Friel was appointed representative to the Conference of Governing Bodies of the Legal Profession. The standing committees were also appointed, after which the meeting was adjourned.

Adrian Gilbert, K.C.
Replies to U.N.B. Resolution

Dr. A. W. Trueman, *President,*
University of New Brunswick,
Fredericton, N. B.

Dear Mr. President:

Members of the Faculty of Law of the University were surprised to read in an issue of "The Brunswickan" published November 14th a resolution of the S. R. C. respecting the Law School.

I have been requested to correct the misleading and inaccurate statements in the recitals of the resolution in question.

Respecting the Courts in Fredericton and Saint John, the Chancery Division has 10 terms annually in Saint John and 7 in Fredericton; The King's Bench Division holds 5 circuits in Saint John and 3 in Fredericton; the Court of Appeals has 5 terms in Fredericton per year. I have omitted reference to the Divorce Court. For the law student, trials in the Chancery Division and King's Bench Division are much more instructive than Appeals.

The Barristers' Society has an excellent library in the City of Fredericton, but the Society has never expressed itself as willing to extend the facilities of its library (as has been presumed by the S. R. C.) to a large number of law students. There are now 54 students in the Law School at Saint John, and for over fifty years the Saint John Law Society has permitted law students to use its very excellent and spacious library. A fee of $10.00 per student is paid to the Law Society by the Faculty of Law as compensation for the wear and tear on its reports and text books. The Law School also has its own library which has been greatly extended in the past few years.

That the students in the Law School are taught by practising lawyers, is correct. Four of the lecturers received their training at the U. N. B. Law School, four at Oxford, two at Harvard and one at Columbia. Not only are the Faculty members extremely well qualified but all are very conscientious in the discharge of their duties. They give freely of their time in order to serve the legal profession in the Province.

The statement that "a degree from the U. N. B. Law School is not recognized in other Provinces of Canada" is absolutely untrue. Graduates from this Law School are now practising in every Province of Canada. They have been accepted for post-graduate study in Oxford, Columbia and Ann Arbor. Since the war graduates of the Law School have been admitted to the Bars of every Province of Canada.

The fees in the Faculty of Law are the same as in the Forestry and Engineering Faculties. Cost of living in Saint John is no greater than in Fredericton and living accommodation is much better.

The proposal to raise the standards of legal education in the Province was made by members of the Faculty of Law of the University in Saint John, after the Faculty itself had taken the lead in improving the standards. The writer was the chairman of the Legal Educational Committee of the Barristers' Society and also was a member of the committee of the Law School which recommended the changes in the curriculum. I am therefore acquainted with the changes made and the reasons for them.

The Faculty has taken steps to obtain a Common Room and an additional Lecture Room which will be ready for occupancy in the new year. The Faculty has also recently recommended to the Senate the engagement of a second full-time lecturer.

It is hoped, Mr. President, that these corrections will enable the members of the S. R. C. to view the matter more clearly. It is to be regretted that such unfavourable and inaccurate publicity should be given to any Faculty of the University when the facts could have been so readily ascertained.

Yours very truly,

A. B. GILBERT,
Secretary of the Faculty of Law.

WOMEN IN THE LAW

The following is a portion of an address given by M. Louise Lynch, Registrar of the U. N. B. Law School, at the annual Student-Faculty Dinner held in Saint John last April.

Portia is of course the first woman lawyer, in fact the name "Portia" has become synonymous for women lawyers in the English language. Portia had her triumph while wearing boy's clothing and impersonating a young civil doctor of Rome named "Balthasar." It is doubtful if her speech beginning "The quality of mercy is not strained" has ever been equalled or surpassed in legal forensics. Nor would it be easy to match her ingenuity in upholding the justice of honouring Shylock's bond by giving him his pound of flesh and at the same time insisting that it be exacted without shedding one drop of Christian blood—two impossible conditions. It is a bit disappointing to find that Portia has not been a general favorite with critics of Shakespeare who are unanimous in considering "The Merchant of Venice" an excellent piece of work.

William Hazlett writing on the play has this to say:—"Portia is not a very great favorite with us and I object to a certain degree of affectation and pedantry about her which is very unusual in Shakespeare's women but which perhaps was a proper qualification for the office of a civil doctor which she undertakes and executes very successfully."

Turning to modern times and fact instead of fiction we find that Mrs. Belva A. Lockwood was the first woman admitted to the Bar in the United States. At about the age of thirty-eight she began the study of law. Her application for admission to the Columbia Law School was refused on the ground that her presence in the class would "distract the attention of the young men." She continued her studies, receiving a Master of Arts degree from Syracuse University and the following year was admitted to the National University Law School, from which she graduated with a degree of Bachelor of Laws. After a long and spirited controversy she was admitted to the Bar of the Supreme Court of the District of Columbia, where she practiced with success. In 1875 she sought admission to the Court of Claims but was rejected on two gruonds, first, because she was a woman and second, because she was a married woman. The next year she sought admission to the United States Supreme Court and was the first woman to be granted that honour. Since that time many women have successfully followed the legal profession in the United States.

And now we shall turn to New Brunswick. We find that Mabel P. French of Saint John was the first New Brunswick woman to embark on a legal career. Miss French was admitted as a student-at-law by the New Brunswick Barristers' Society in 1902 and after having complied with all the requirements of the Society as to study and examination, she duly applied to the Council of the New Brunswick Barristers' Society for admission to the Bar. The Council passed a resolution stating that it was fully satisfied as to her moral character, habits and conduct and that, subject to the opinion of the Supreme Court of New Brunswick as to her sex being under existing laws a barrier to her admission as an attorney, recommended her admission as an attorney of the Supreme Court of New Brunswick.

This resolution, subsequently ratified by the Society, was presented to the Supreme Court of New Brunswick on November 24th, 1905. The Supreme Court held that at common law a woman could not be admitted to practice as an attorney and dismissed the application. Chief Justice Tuck was

most vigorously opposed to the application. He pointed out that if Miss French were entitled to be admitted as an attorney she would in a year be entitled to be called to the Bar and in a few years would be eligible to be appointed to the Bench. In his judgment he pointed out that the argument for Miss French's admission was based chiefly on the advanced thought of the age about the right of women to share with men in all paying public activities, pointing out that no mention had been made either of police constables or the army. Quoting from his judgement . . . "If I dare to express my own views I would say that I have no sympathy with the opinion that women should in all branches of life come in competition with men. Better let them attend to their own legitimate business."

Mr. Justice Hanington was not quite so vehement and I should say that he was cautiously against the proposal. Mr. Justice Barker was also very much opposed to admitting Miss French as an attorney.

His judgment is a lengthy one and in answer to the argument that it was one of the privileges and immunities of women as incident to their citizenship to engage in any and every profession or occupation or employment in civil life, he quoted Mr. Justice Bradley of the Supreme Court of the United States in a judgment in the year 1873 in refusing admission to a married woman to the Supreme Court of Illinois as saying:—

"It certainly cannot be affirmed as an historical fact that this has ever been established as one of the fundamental privileges and immunities of the sex. On the contrary, the civil law, as well as nature herself, has adways recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband."

Further on in the report Mr. Justice Bradley proceeds thus:—

"It is true that many women are unmarried and not affected by any of the duties, complications and incapacities arising out of the married state, but these are exceptions to the general rule. The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases."

In the opinion of Mr. Justice Barker, the word "Person" in many cases can be taken as referring to women as well as men, but he was of the opinion that in the case in question no such contemplation was in the minds of the Legislature when the Act was passed regulating the admissions to the Bar in New Brunswick. Mr. Justice McLeod and Mr. Justice Gregory agreed with Mr. Justice Barker. Mr. Justice Landry with true Gallic wisdom took no part.

The following year, March 22nd, 1906, an amendment to the Barristers' Act was passed enabling women to practice law in New Brunswick. Miss French was admitted to the New Brunswick Bar in 1907. She successfully practiced law in the West for several years before she married and retired. It was not until 1921 that the next woman was admitted to the Bar. In that year Muriel Corkery, (now Mrs. William J. Ryan),

was sworn in. She has had a successful career as Trust Officer in the Eastern Trust Company and has also served as Official Receiver in Bankruptcy and Deputy Clerk of the Saint John County Court.

I shall now give you a brief resumé of the various New Brunswick women who have practiced law. Mrs. Ryan was followed by Miss Margaret Teed, who had a brief career in the legal department of a Canadian corporation prior to her marriage, and Miss Lesley Pickett, a former police matron in Saint John, and presently matron of the Coverdale Home for Girls.

When I entered the Law School as a student twenty years ago, Miss Mary Wilson, a Saint John girl, who is now in the legal department of the Attorney General in Fredericton, was a third-year student and two other young women were in my class. One of these gave up her studies after one year, and the other one who was a special student successfully completed the law course but could not receive a degree since she had not satisfied the requirements of two years in Arts. Consequently, I was the only woman in my graduating class of eight. That same year, Mrs. Hume, the former Hamlin Fairweather, was a first-year student. Mrs. Hume has successfully practiced law in Saint John as a member of the family firm ever since her graduation. She was followed by Miss Dorothy Hughes of Fredericton, Miss Barbara Ramsey, Miss Muriel Sargent and Miss Katherine Boyle. Miss Hughes, now Mrs. Colter King, practices in Fredericton and during the war years had a position in Washington. Miss Ramsey's untimely death cut short a most promising career. Miss Sargent was in the office of the Enforcement Council of the Wartime Prices and Trade Board following her graduation. Miss Boyle practiced for a short time before her marriage.

In addition to the graduates of our School, I feel I should mention two other New Brunswick women lawyers who are outstanding in their profession, namely, Mrs. Muriel Ferguson, Fredericton, who has the unique distinction of being the only woman in Canada to be appointed as Regional Director of Family Allowances. Some years ago Mrs. Ferguson very capably filled the office of Judge of Probate for Victoria County and during the war years was Chief Enforcement Counsel of the Wartime Prices and Trade Board in Saint John. Miss Frances Fish is a prominent lawyer in Newcastle. Another Saint John girl, Miss Margaret Drummie, graduated in law from Dalhousie University but never practiced her profession.

I should like to give you a few brief facts concerning the history of the woman lawyer in Ontario. The Law Society of Upper Canada was formed in 1797 and it was one hundred years later before a woman was admitted to the practice of law in Ontario. At this point I should like to tell you an interesting story that I came across in my research.

Miss Phyllis Axford, writing in the "Saturday Night" in 1948 on the subject of "Portias of the Province" says:—

"Although it is only fifty years since women have been recognized as professional lawyers hereabouts, one of the first recorded law cases, a full hundred years before women came to the Bar, was prepared by a woman who appeared in court on behalf of her client. In this case, the client was her husband, and because of the Law Society not having been founded at that time, the conventions of the Constitution dictated that a man involved in litigation or accused of crime could appoint to defend his interests any wise and well-informed person of his own choosing. This defendant selected his own wife. Officially she became his recognized attorney."

During the century many women had applied to Osgoode but had been refused by the Benchers. Finally in the year 1897, Clara Brett Martin was admitted to the Bar. Twelve of the Benchers were for her, twelve against. Th chairman cast the deciding vote. He was Mr. Oliver Mowat. A contemporary report of the incident states that "He voted for Miss Martin and shortly afterwards was knighted."

Ten years elapsed before another woman summoned sufficient courage to seek admission to the Bar. However, in the fifty years that have elapsed 112 women have been admitted to the Bar of Ontario. Many of these women have gone into administrative or advisory positions in banks, trusts, insurance or investment companies or in law publishing or law library work. Of the twenty or thirty who have elected to practice, the record has been impressive.

I would like to single out three outstanding women lawyers, each of whom has the unique distinction of having been appointed a K. C. The County and Surrogate Court Judge for Haldimand County is Miss Helen Kinnear, who was a most outstanding and successful lawyer prior to her appointment to the Bench. Miss Margaret P. Hyndman, K.C., of Toronto, is an extremely successful corporation lawyer and widely known throughout legal circles in Europe and the United States as well as in Canada. Miss Hyndman was associated with Mr. Wegenast, an outstanding Canadian corporation lawyer, whom she assisted in writing a most valuable text book on company law. Miss Hyndman recently distinguished herself as one of the barristers appearing before the Supreme Court in the "margarine case." Miss H. B. Palen, K.C., of Toronto, is the Assistant Registrar of the Ontario Supreme Court.

Time does not permit me to tell you of Canadian women in the other Provinces who are eminent in law. Some of these are magistrates. It is just recently that women have been eligible to practice law in Quebec. However, for many years some of the most successful women lawyers in Canada practiced in Quebec firms. These women were members of the Bar of Ontario and did all of the actual work incident to their profession even though they could not appear in Court.

There are also many outstanding women lawyers in England and many of them have attained high positions although no woman has been honoured to date with an appointment to the Supreme Court.

Turning from statistics I would now like to conclude by saying a few words about law as a profession for women in general. It is an exacting profession and must be your great interest in life. The law is a jealous mistress and will not stand for rivals. The hours are long and trying, the responsibility is acute. The women who have succeeded in law spectacularly are those who were good students and were impassioned with the thought of becoming lawyers. They have shown a strong sense of social responsibility and have contributed much to their communities.

It is rather interesting to note at this point that at the present time women lawyers hold the chief executive positions in the Business and Professional Women's Club, an international organization including women in all the businesses, trades, and professions. The president of the Canadian Federation, the vice-president for Canada on the International Federation, the president of the American Federation, and also of the International Federation are all lawyers.

The average woman lawyer must be better than the average man. From my own experience I should say that women are better suited than men for some branches of the law, namely, probate and estate work, conveyancing, and general office routine. I do not consider that women as a rule make as good court lawyers as men although no doubt there are women who could be notable exceptions to the rule.

I would go further and say that I would not consider the field of criminal law would appeal to many women both as to the nature of the work and the type of client that one would come in contact with. Perhaps, however, in this opinion I am prejudiced by my own unsuccessful experiment in this field.

The frivolous and unstable woman, particularly if she is the type that does not know her own mind from one day to the next even if she be clever, and some women are, is not suited for a legal career which requires a lifetime of study and research.

In order to succeed in law, a woman, like a man, must be interested in people and their problems, because almost invariably it will be the man or woman with a problem with whom you will have to deal. A sense of humor is an invaluable asset as is a working knowledge of a great many things totally divorced from law. You will find that you will have to learn quite a bit about many different things. One day will bring you a woodsman as a client, the next day it may be a grocer and your third client may be a very wealthy person who is anxious to make a will which will provide the greatest benefits for his heirs while at the same time be drawn in such a way as to make his estate liable for a minimum amount of succession duties. From this you will see that you will have to combine a knowledge of the grocery business, lumbering and accounting, possibly all in the same day. A high sense of honour is essential since you will receive many confidences which must be kept inviolate.

Even in this enlightened day you will find quite a few people who are prejudiced against women lawyers. From my experience I have found that people living in rural districts are extremely wary of what they refer to as "lawing women." However, after the first initial prejudice is overcome these people often become our staunchest supporters. Strangely enough women are more inclined than men to view with disfavour the woman lawyer, but here again once established you often find your most loyal co-operation. Even some judges are not above being prejudiced against women lawyers.

In closing, I wish to add that many people, I would say the majority, have a definite idea that a woman lawyer should be plain, dowdy, and pedantic, in short, a blue stocking. On the contrary, most of the women lawyers that I have known have been attractive, well-groomed, chic women, very creditable examples of their sex, as well as their profession and yet you will constantly hear if you happen to look even passingly fair, "You don't look a bit like a woman lawyer,"—and this remark is supposed to be a compliment.

- STUDENTS SECTION -

NOTES ON ROMAN JUSTICE AND EQUITY

In its strict sense, justice is "the virtue whereby a man renders to everyone his due." The opening words of the Institutes of Justinian give Ulpian's definition of justice—Justitia est constans et perpetua voluntas jus suum unicuique tribuendi.—Justice is the constant and perpetual intention to render everyone his due. Justitia then is the virtue of the human will which inclines man to act justly, to follow what justice prescribes. This definition of justitia then is borrowed from Ulpian. "The juris praecepta are there: to live honestly, to injure no one, to give everyone his due."

Justice properly so-called is had when one's due is to be rendered him in full measure, no more or less, or according to the rigor or strictness of law, namely, it corresponds with the precepts of law strictly interpreted. On the other hand there would be justice in a broad sense, if the thing due must be given because of some other virtue, e.g., religion, decency, fealty or equity. Justice then in this extensive sense differs little from "virtue"namely, goodness, honesty, rectitude, righteousness; for it includes within itself the whole circle of virtues. Thus we read in the Old Testament: "Abram believed God, and it was reputed to him unto justice." There is justice in the broad sense when an employer doubles the wage of his employee from affection or munificence. Such justice also has a place in determining the salary of workmen where a twofold intrinsic value is to be considered. There are the humane-moral and the economical-material aspects of labour; and so the personal wage with the family wage or, as it is called, "the living wage" is alone to be considered the minimum just wage.

This broader acceptation of justice is what we call natural justice as compared to or distinguished from legal justice: for while the latter signifies strict conformity with the precepts of human laws, the former denotes conformity with the natural law, requires the practice of other virtues besides that of justice, all of which must be mutually combined and made to harmonize; for the various virtues, far from running counter to one another, are fundamentally in accord, since all virtues come from God, the highest Good. Accordingly, we have the significant statement of Paulus, the Roman jurist: Not everything that is permitted by law is morally right; so too the 90th of the 211 Regulae juris, with which the Roman Digest ends, declares: "In all things, but especially in law, equity is to be regarded." Celsus, author of an early encyclopedic work on jurisprudence, with elegance and acumen defined jus as ars boni et aequi, the art of all that is good and equitable, and adds that for this reason a jurist is a sort of minister or priest. This art, ars boni aequi, ought to consist in a correction of the strict letter of law that works an injury, or when a positive human law is not in harmony with the principles of natural justice, or again when it is in itself so deficient that what is legally right becomes morally wrong. Seneca rightly observed: "How small a sphere is the domain of law in comparison with that of obligation! How numerous are the obligations of affection, humanity, liberality, justice and fealty, all of which are found outside the written law." Aristotle, in Ethica Nichamachea V-10 therefore promptly calls equity the correction of statute or written law. Summum jus est summa injuria,—very frequently the full measure of the law is the full measure of injus-

tice. Accordingly, they who always insist upon the full measure of their legal rights and take legal proceedings to obtain the same when such rights work injury to others are to be roundly condemned. Hence Gaius says. "It often happens that a person is bound according to the civil law, yet it is unjust that he should be condemned," and Paulus declares: ". . . . this pertains to equity, with regard to which pernicious errors are frequently made under the authority of the science of law."

Persecutors often appeal to written laws, as did the Roman emperors in their attacks upon the Christians. But from the natural law itself their injustice was patent. Even in our day in certain places persecutors defend their inquity by appealing to the written law. But it is absolutely cruel to assert freedom and the authority of law in those circumstances when what are called laws are actually the reverse of law and as such offend natural justice. It is not justice that is wrought by laws, but laws themselves should be formulated according to justice. Justice should not be measured by laws, but laws themselves should be adapted to justice and right.

LUMLEY v. WAGNER

Lumley v. Wagner is a case where, there being an executory contract in part positive and in part negative, the positive part being such as the Court is unable to enforce specifically, but will interfere in respect of the negative part by means of an injunction. Here the defendant entered into a contract with the plaintiff to sing at his theatre, and not to sing at any other; and Lord St. Leonard granted an injunction restraining the defendant from singing at any other theatre than the plaintiff's, though the specific performance of the positive part would have certainly been beyond the Court's power.

A contract of hire and service is not one of those contracts of which the Court will decree specific performance. You cannot directly compel me to serve you. Can you do so indirectly by obtaining an injunction to prevent me from breaking that negative but unexpressed term in the contract that I am not to enter the service of anybody else? No, you can not. This seems well settled, that a merely implied negative term in a contract which is substantially positive can not be enforced by injunction. In Whitwood Chemical Co. v. Hardnan (1891) 2 Ch. 416, Lindley L. J. said that he looked upon Lumley v. Wagner as an anomaly not to be extended. In that case the manager of a manufacturing company had agreed that during a specified term he would give all his time to the business. It was held by the Court of Appeal that the company could have an injunction to prevent him giving part of his time to a rival company.

We seem to arrive at this principle: that you can not indirectly by means of an injunction enforce the specific performance of an agreement which is of such a kind that specific performance of it would not be directly decreed; but if you can separate from this positive agreement an express negative agreement that the defendant will not do certain specific things, then you may have an injunction to restrain a breach of that negative agreement.

Accordingly, Fry on Specific Performance at page 402 states: "the position of that branch of the law on which Lumley v. Wagner is the leading authority can hardly be said to be very satisfactory. It may, it is conceived, be concluded that the principle of this case will not be extended: that negative stipulations will not be implied except in cases

where the Courts have already done so: and that even the presence of an express negative stipulation will not be found a sufficient ground for jurisdiction unless the contract is of a kind of which specific performance can be granted. In other words, it is probable that the Court will hereafter, except so far as it may be found by existing authorities, consider whether the contract in respect of which the injunction is sought is or is not of a kind fit for specific performance; that, if it be, the Court will tend to restrain acts inconsistent with it, whether there be negative words or not: that if it be not of a kind fit for specific performance, no injunction will be granted, even though negative words may be present."

This seems to be the conclusion of Hallett J., (i.e., that he is bound by existing authorities) in his decision of Marco Productions Ltd. v. Pegolo (1945) 1 KB 111. Here was a contract for personal services. The defendant agreed to act for the plaintiff company for a certain period of fixed terms. The contract contained a negative covenant stating that defendant would not act elsewhere without consent of the plaintiff during the period of engagement. In breach of that covenant the defendant acted in another locality. This was an action by the plaintiffs for an injunction restraining the breach of that covenant. Following Lumley v. Wagner, the injunction was granted, for as Hallett J. said: "The agreement to perform for the plaintiff, and during that time not to perform for anyone else is in effect one contract. The affirmative covenant by the defendant and the negative stipulations on the part to abstain from the commission of any act which will break in upon their affirmative covenant, are covenants which are ancillary and concurrent, and operate with each other."

Professor Stevens has pointed out (*) that there are three strong reasons against the direct enforcement of contracts of service; firstly, the impossibility of continual supervision by the Court; secondly, the invidiousness of keeping persons tied to each other in business relations when the tie has become odious, and thirdly, and chiefly, the undesirability of turning a contract of service into a status of servitude.

However, in Lumley v. Wagner these objections are more apparent than real. For instance, regarding the status of servitude, Miss Wagner might, without in any way contravening the injunction, have obtained other employment, quite outside the singing profession, at a salary which might keep her in ordinary comfort, though not in accordance with her usual standard of luxury.

(*) See 6 Cornell Law Quarterly, 244.

* * * * *

IN RE WAIT

The dispute in In Re Wait as to whether goods, which were a definite part of a definite whole, should be called specific goods raised a double question. Were they specific or ascertained within the meaning of the Sale of Goods Act Section 52 or did the circumstances of the case create equitable rights such as a lien or assignment of the goods?

There was a contract for delivery by A to B of 1000 tons of Western White Wheat. B entered into a sub-contract with C for 500 tons out of this shipment. B became bankrupt. The trustees in bankruptcy claimed the 1000 ton shipment to pay the creditors.

C claims specific performance of the sub-contract under S 52 of the Sale of Goods Act which permits the granting of specific performance "in any action for breach of a contract to deliver 'specific' or 'ascertained'

goods" or because he had acquired, on receipt of the goods by B and on payment of the purchase price, an equitable assignment.

The majority of the court held that the goods were neither specific nor ascertained at the time of contract and that being the case, no equitable right could have arisen in favour of C.

Sargent L. J. dissented, holding that these goods apart from S 52 were so definite that an equitable assignment of them had been made.

Atkin L. J. took the definition of "specific" goods from the Code as goods identified and agreed upon at the time of the contract of sale and himself defined "ascertained" goods as those identified in accordance with the agreement after the time of sale.

These goods had never been made specific or ascertained according to these definitions since they had been described only as 500 tons out of a cargo of 1,000 tons. No definite allocation of a particular 500 tons had been made to the contract.

With respect to an equitable assignment he held that the code governed a contract. An equitable assignment might arise outside the contract but the normal contract for sale and acts in pursuance of it, without more, is regulated by the Code. An equitable assignment could hardly arise outside the contract unless the goods had been set apart so that they could be identified.

Atkin L. J. bases his judgment on the broad view of commercial needs. Equity grants specific performance primarily when damages are not an adequate remedy. Usually on this principle equity will not grant specific performance of a contract for the sale of goods which are not of any peculiar value. Under the Sale of Goods Act an exception has been made in the case of specific or ascertained goods. In following the underlying equitable principle it would be too great an extension to consider this portion of a shipment of wheat "specific goods."

But Sargent L. J. took a fundamentally different view. He cited Holroyd v. Marshall in which Lord Wetsbury states "that property which was future and unascertainable at the time of making the contract was sufficiently described if it were ascertainable when the contract came to be enforced."

He reasons that these goods are specified sufficiently to create an equitable assignment even if 500 tons have not been specifically earmarked since they are a proportion of a whole in this case, one-half. But his conception is that the 500 tons were specific. He maintains that if the particular 1000 ton cargo had not arrived the contract for the 500 tons could not have been performed and therefore the cargo being a denfiite 500 ton portion of that cargo would be specific.

But it was argued against him that this would be a failure of subject matter, to be dealt with under Taylor v. Caldwell and did not establish the goods as specific in themselves.

The reasoning of the judgment of Atkin L. J. appears more soundly based. One-half of a shipment may seem to be definite but dozens of orders might have been made from the one shipment, in which case much of the definiteness would disappear as between various contractees.

COMMONWEALTH UNION

"The British Empire is not founded on negations
It depends essentially, if not formally, on positive ideals
Free institutions are its life-blood
Free co-operation is its instrument
Peace, security and progress are among its objects."
—Balfour Committee Report, 1926.

The Commonwealth and Empire Today

The whole structure of the British Commonwealth and Empire is gravely menaced by the two great crises of the post-war world—the dollar crisis and the cold war.

Britain's material position has been so adversely affected by the costs of the war that there is even some doubt as to whether she will long be able to retain her position as a great power alongside of the United States. The fortunes of the United Kingdom have been so altered that she is no longer the directing head of a great commonwealth and empire,, but only the sentimental heart of a loosely-grouped body of independent nations.

Great Britain's inability to retain a world-wide position as a great power has led to the operation of centrifugal forces on the Commonwealth and Empire. Canada, for instance, which has long relied on the British Navy for its security, now places its faith for protection from external aggression on the Atlantic Pact. The drift of Newfoundland away from the centre was so evident that the people of that island chose to unite with Canada rather than to seek the solution of responsible government or union with the United States. India provides another example of the disintegration of the Commonwealth and Empire in that she is only bound to our brotherhood of nations by the lightest of links. Unless some arrangement is made to provide adequate protection to Australia, New Zealand and India, through a Commonwealth system, these nations will be forced to seek the protection of a Pacific Pact led by the United States.

The Nature of Our Crisis

Thus, throughout the world, the Commonwealth and Empire is in crisis. It is a two-sided crisis. The danger of this crisis is that the Commonwealth will dissolve and pass away. The cold war and the dollar crisis forcing, as it does, the solidification of blocs, may place the Commonwealth and Empire under the domination of the United States. If the present decentralization trend of the Commonwealth continues, the Americans will become the residuary heirs of the Commonwealth power and leadership; the Commonwealth can pass away and become a sentimental memory.

The Commonwealth in crisis provides a great opportunity for the Commonwealth peoples all over the world. If the loyalty, tradition and self-interest of the Commonwealth peoples is strong enough to build a Commonwealth Union upon the present crisis then the power, prestige and moral force of our free Commonwealth can be preserved to benefit all mankind.

The Commonwealth today may be likened to an ancient automobile which has become loose in all its parts and which is in danger of flying apart. If the automobile is to be preserved the mechanics must be called in to tighten the body. Similarly, to save the Commonwealth the whole structure must be tightened.

Periodic conferences of Commonwealth prime ministers are of little use to a Commonwealth in crisis. A Commonwealth Union is needed to cope with the tremendous problems of our time. Such a union provides the basis for the only kind of bloc which could preserve a global balance of power and, at the same time, give moral leadership to the small powers of the world.

Canada and Commonwealth Union

Until 1945, Canada's external policy was based on the Laurier-Borden-King philosophy of "no commitments." The country has eschewed close entanglements with the United States and with the Pan-American Union. On the other side, in order to keep the ship of state on an even keel, the country refused to make any long-term committments within the British Commonweatlh and Empire. This successful policy has brought Canada to its greatest development. We are now an independent middle power.

Since the ending of the war this policy has been fundamentally altered. Today, Canada is relying more heavily and more exclusively on the American military machine than at any time in its history. Moreover, Canadian economic, political and moral welfare is now almost entirely dependent on the American industrial machine. This is a most unhealthy position for Canada. This Dominion can play its greatest role in world economic and political affairs not as a junior partner of the United States but as a senior member of the world-wide Commonwealth Community. In order to balance off our heavy entanglements with the United States we should also enter into binding arrangements with the other nations of the British Commonwealth.

The signatory nations of the Atlantic Pact are held together primarily by fear of Russian aggression. The Commonwealth system has never been directed against any nation, but has been bound together by a common love of democratic institutions. Surely this is a solid basis to build a Commonwealth Union upon.

Canada has great moral and material power. Her destiny and her duty lays upon Canada a moral obligation to use her power for the good of mankind. By using her influence in world affairs as conscience directs Canada can increase her moral and material stature. Dependence on Washington for shaping of Canadian foreign policy would mean the lowering of Canada's status. In fact it would be a new form of isolationism where Canada blindly followed the dictates of the American Government without originating or following through on her own foreign policy.

Canada can best perform her part in world affairs by working through a United Commonwealth. If Canada relies exclusively on her position as a North American power as the source of her strength her power will be dependent on the United States; her role in world affairs would not be separable from that of the United States. The danger of that policy is that our independence and power would be sapped, and in time Canada could occupy a position of subservience viz á viz the United States like of the South American republics.

The task of Canadian statesmanship is to seek close co-operation with the United States but, at the same time, to ward off domination or absorption by the United States. The technique of maintaining our independence and of increasing our position is to be found in union with other Commonwealth countries.

What Is Commonwealth Union?

Commonwealth Union does not mean a federal union . Nor does it mean a legislative union. Neither would be practical or feasable. There is a social gap between, say, the Indian peoples and the Canadian people that may not be bridged within our life-time.

Commonwealth Union, then, is more akin to an administrative union of governments than to a union of states or peoples.

The first common problem that could be handled by Commonwealth Union is defence. A Commonwealth Defence Board would be the agency charged with integrating and co-ordinating all of the armed forces of the Empire and Commonwealth. Standardization of weapons, etc., would be one of the first problems to come before the Board. The basis of standardization would be the Commonwealth and Empire but the scheme would necessarily be linked to American production of war material. Production of weapons of war by Commonwealth countries would be subject to the central plan drawn up by the Board. Training of personnel could well be a matter for the agenda of the Defence Board.

A Commonwealth Finance and Production Board could act as a clearing house on information for the Commonwealth and Empire in the related matters of finance and production. This Board might be charged with reviewing the whole tariff structure of Commonwealth nations. In respect to tariffs, Canada is in a special position. In all probability, Canada would be unable to join any such economic bloc as a Commonwealth Customs Union. However, since Canada is a creditor with respect to all of the Commonwealth countries, Canada might well consider a general preferential lowering of tariff on Commonwealth imports.

A Commonwealth Migration Board could be set up to deal with population transfers between Commonwealth and Empire countries.

A Commonwealth Court should be utilized to adjudicate disputes between member-nations. A Commonweatlh Court of Human Rights might also be valuable.

Commonwealth cultural agencies could serve a useful purpose in promoting the exchange of information and knowledge between members of the Commonwealth.

The administration of the colonial empire provides a special problem for the Commonwealth and Empire. The administration of the colonies by Whitehall need not be disturbed but there is a need for financial assistance by countries like Canada in the economic development of the colonies. If Canada is to give this assistance the Canadian Government should be represented in the administration which governs the colonies.

The boards which have been proposed hereinbefore should be composed of cabinet ministers representing the various Commonwealth countries. Thus, the boards would only possess delegated powers. Actions and policies of the boards would be subject to the ratification of the member states. Under the jurisdiction of the boards and on the technical level permanent sub-committees and a Commonwealth secretariat will be necessary.

The American Attitude

The American Government and people have underwitten Western Union. During the last war the United States guaranteed the survival of the British Commonweatlh and Empire. There is no reason to suppose that American public opinion would oppose Commonwealth Union. Indeed, the United States might welcome and support Commonwealth Union with the consequent closer grouping of the democratic nations of the world.

The cardinal fact that we face today is this: Unless the Commonwealth and Empire is united, the whole system may pass away. The centrifugal and disintegrating forces now operating on the Commonwealth and Empire give us every reason to conclude that the Commonwealth and Empire has no divine mandate to exist.

> *"'Before my breath, like blazing flax,*
> *Man and his marvels pass away;*
> *And changing empires wane and wax,*
> *Are founded, flourish and decay."*
> ("The Antiquary": Scott).

To survive the Commonwealth and Empire needs the moral food supplied to men's minds only by closer union; sentimental claptrap is no nourishment.

Non enim ignavia magna imperia continari: For great empires are not maintained by cowardice.

(Tacitus: Annals, Book 15, 1).

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DEBATING COMMITTEE

On November 28th and 29th representatives from eleven Maritime Universities met in Halifax where Dalhousie University played host to the annual Maritime Intercollegiate Debating League (M. I. D. L.) Conference. The conference this year resulted in a lot of very important work being accomplished by the various representatives. The regular M. I. D. L. schedule which provides for each member University having three official debates was drawn up, with the Law School drawing debates with Saint Dunstan's, Kings and Mount Allison Universities. A few important changes were made in the M. I. D. L. constitution during the course of the conference and on the whole the various delegates returned home with the gratifying feeling of having accomplished a good deal of work. A word here is in order to express our sincere appreciation to Dalhousie for having made our stay there a very pleasant one and for the capable manner in which the conference was conducted. Representatives from the Law School were, J. Eric Young and Ervin M. O'Brien.

It is interesting to note how we as an individual University fit into the national structure. Before the establishment of C. U. D. A. in 1947 the national aspect of debating was guided

by N. F. C. U. S. In 1946 it was suggested by N. F. C. U. S. that all University debating leagues such as our own M. I. D. L. and the Western University Debating League (W. U. D. L.) organize a national league under the name of C. U. D. A., which would be concerned with, "the arranging and promoting of debates between the East and West, and between the United States and Canada." Accordingly a constitution was drawn up and approved by the then members of C. U. D. A. The M. I. D. L. officially joined C. U. D. A. in 1948, although C. U. D. A. is now the parent body of N. F. C. U. S. still retains its committee on debating which makes recommendations and works in consort with C. U. D. A.

At present the C. U. D. A. is made up of four intercollegiate debating leagues called: (a) The Inter University Debating League, (b) The Maritime Intercollegiate Debating League, (c) The McGoun Cup League (Western University Debating League) and (d) Ligue des Debats Interuniversitaire—Trophis Villeneuve (French Speaking Villieneuve Trophy League from Quebec). We can see from the above that the debating scheme is carried on a national plane. Notwithstanding that C. U. D. A. is our parent body our close association with the debating committee of N. F. C. U. S. insures us a prominent position in the field of international debating.

To illustrate the extent to which our Dominion Universities are interested in debating, let us look at some of the highlights of international debating sponsored by N. F. C. U. S. before the organization of C. U. D. A. In 1928 a team from the Maritimes was sent through the West with great success, while at the same time a team from Australia toured the whole of Canada. In 1931 a New Zealand team toured Canada, an American team toured East of Montreal, and a British team was sent across Canada. Since 1931 N. F. C. U. S. has been instrumental in arranging debates with various other countries and this year the organization has a request from South Africa for a Canadian team to tour there. Maritimers have been featured on these various tours and it is also quite generally admitted in higher debating circles that the Maritimes have produced and are still producing top-notch debaters.

Perhaps the best way to illustrate just what N. F. C. U. S. does and what it means to us is to point out some of the purposes of that organization. Among other things N. F. C. U. S. aims for the promotion of Federal aid to University students. One of the failings of our present-day Democratic system of Government is that there are at present so many capable men deprived of a University training due to their inability to pay for it. In this connection N. F. C. U. S. prepared a brief to be submitted to the Royal Commission on Arts, Letters and Sciences,

which is currently sitting across Canada. Included in this brief are recommendations regarding scholarships and the costs of text-books. Plans have been initiated by N. F. C. U. S. whereby the University of Montreal is attempting to organize seminars on a national plane with the hope of getting internationally famous lecturers to conduct them. Then again perhaps the greatest contribution to our great Canadian Nation and its institutions is N. F. C. U. S.'s constant striving to promote Canadian unity.

It is our hope that the C. U. D. A. and the M. I. D. L. will retain its close co-operation with N. F. C. U. S. in future—a future filled with uncertainty and a future in which international understanding and goodwill can be achieved only through a mutual knowledge and respect for our various histories, traditions and institutions and a sympathetic understanding. of our problems and difficulties. Debating is and always has been one of our strongest expresions of democracy and through this medium the Universities of Canada today which are moulding the leaders of tomorrow can do much to promote that feeling of international goodwill which is so essential if peace is to reign over this much-troubled world.

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MOOT COURT COMMITTEE

In 1947, the University of New Brunswick Law School succeeded in filling a very serious gap in its student organization when Mr. Gordon Harrigan introduced the Moot Court. Owing to the diligence of the committee and the enthusiasm of the general student body, the Moot Court soon became established as a vital element in the extra-curricular set-up of the School.

The succeeding year witnessed further spade work in determining the working policy of the Moot Court and as a consequence several changes in its mode of function. At this time the Moot Court was so designed as to permit the third-year students to sit on the Bench as Judges. The second-year students pleaded the cases and the first-year students acted as Junior Counsels—the duties of the latter involved looking up pertinent material, under the guidance of the Senior Counsel, and making a short introductory address at the opening of the Moot Court.

This procedure proved fairly successful and yet was neither devoid of weaknesses nor immune to criticism.

The year 1949 countenanced several proposed revisions plus a sudden aftermath of startling controversy. The scheme recommended by this year's committee clearly set out the necessity of calling in practising Barristers in order that the students might acquire proper direction from the Bench. Also put forward was the idea that third-year as well as second-year students should do the pleading as opposed to locating the former on the Bench,—a position ill-suited to their capacities and present training.

At this juncture may it be understood that these recommendations stemmed from the intention that the Moot Court should serve as a non-compulsory, practical course of instruction, in order to avail the students of any benefit.

The third-year students may possibly have experienced some measure of chagrin with regard to a plan suggesting that they assume a more preparatory role in favour of usurping Barristers. But whatever their reasons for discontent they most generously consented to a compromise which permitted the committee to stage an exhibition Moot Court. Mr. J. H. Drummie, K.C., acted as Chief Justice and was ably assisted by Messrs. F. S. Taylor and D. M. Gillis acting at Puisne Judges. The hypothetical case was prepared by the Faculty advisory committee and pleaded by both second and third-year students.

It is hoped most sincerely that the third-year students will take advantage of the opportunity afforded them to plead cases before experienced men and that they will become infected by the interest shown by several of their number.

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SOCIAL COMMITTEE

This year our Social Committee is made up of Ted Gilbert, Wally Macaulay, Len Fournier and Miss Camille Robichaud. Their first and most important assignment was to organize the Law School Ball, which took place on November 4th. Without a doubt the Law School Ball measured up to our fondest expectations (although we did lose financially). The decorations, food and music were splendid. Everybody seemed to have a fine time.

From now on the Social Committee will be looking after the small informal parties that take place after debates and moot courts. If everything goes off as well as last year, we will have plenty of fun at these gatherings.

But while the Law School works and plays all thoughts will be on our second term party. Last year we held it at the El Belgrano and it was a thoroughly entertaining event. Let us hope we can obtain the same facilities again this year, and enjoy the dancing, eating and sing-song at the end of the evening.

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SPORTS COMMITTEE

The Sports Committee have organized a bowling league among the students of the School with teams from the different years competing. The league meets every Tuesday night and it is open to wives and lady friends of the students as well.

Great interest has been shown so far, with a good turnout every Tuesday night. It is hoped by the Sports Committee that they will be able to organize a badminton league after Christmas. However, for the present the Saint John High School have kindly opened their gym to the Law Students for badminton on Saturday afternoons.

The University of New Brunswick

LAW SCHOOL

SAINT JOHN, NEW BRUNSWICK

COURSES LEADING TO A B.C.L.

LAW FACULTY

Dean of the Faculty of Law

HON. W. HENRY HARRISON, D.S.O., LL.D.

Judge of the Supreme Court of New Brunswick

LECTURER IN EQUITY

Professor of Law

H. O. McINERNEY, M.A., B.C.L., LL.D., Litt.D., K.C.

TORTS, PROPERTY (1). CONFLICTS OF LAW

CONSTITUTIONAL LAW. PROPERTY (2nd YEAR)

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SALES

LESTER G. HOAR, B.C.L.

LABOUR LAW

JUDICIAL REMEDIES AND ELEMENTS OF ENGLISH LAW

T. LOUIS McGLOAN, B.C.L.

CORPORATIONS AND PARTNERSHIPS

PROPERTY (3rd YEAR)

JOHN PHILLIP PALMER, B.C.L.

CONTRACTS (2) (INSURANCE AND BILLS AND NOTES)

WILLIAM F. RYAN, B.A., B.C.L., LL.M.

CONTRACTS (Ist YEAR)

M. GERALD TEED, B.A.

TAXATION

D. GORDON WILLET, M.A., B.C.L.

EVIDENCE

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Graduates of 1949-50

A. P. TRACY-GOULD—Harkins High School, Newcastle, 1934.

DOUGLAS RICE, B.A.—Petitcodiac High School '44—B.A. from U. N. B., 1948.

ERIC YOUNG—Bathurst High School '42—D. V. A. School '45--U. N. B. 1945-46.

CEDRIC T. GILBERT, B.A.—Saint John High School '36—Normal School '38—U. N. B. (B.A.) '48.

DOUGLAS FRENCH—St. Vincent's '45—Saint John High School '46—St. Francis Xavier 1947.

PERCY SMITH, B.A.—St. Thomas Academy '35—St. Thomas University (B.A.) '42.

LEONARD FOURIER—Bathurst High School '39—U. N. B. 1946-47.

JAMES CROCCO—Bridgetown High School '40—Mount Allison 1945-46.

VERNON COPP, B.A.—Saint John High School '44 and '45—U. N. B. (B.A.) '48.

A. ELIZABETH HOYT, B.A.—Saint John High School '42 and '43—McGill (B.A.) '46.

BEATRICE SHARP—Hampton High School '45—Acadia 1945-47.

ELEANOR BAXTER, B.A.—Netherwood School for Girls '43—McGill (B. A.) '47.

JOHN GRAY—Fredericton High School '40—U. N. B. 1945-47.

JOHN COUGHLAN—Saint John High School '40—McGill 1946-47.

ELEANOR BAXTER, B.A.—Netherwood School for Girls '43—McGill

Editorial

LEGAL AID

Equal justice for rich and poor alike is the cornerstone of democracy. Therefore, it is difficult to understand the indifference of the Bar Association in establishing Legal Aid.

Here in Saint John we have had some considerable activity recently. About a year ago B. R. Guss presented a paper on Legal Aid before the Saint John Law Society at its annual meeting. He went so far as to indicate a form of organization and even suggested a Constitution.

Later at Banff at the annual meeting of the Canadian Bar Association, Mr. Guss also presented a Brief advancing the setting up of Legal Aid across Canada by the organized Bar as a collective act.

It is to be noted that since then references have been made by various speakers before Law Societies on the importance of setting up legal aid for the poor.

It seems to us that no proof is needed that it is the duty of the organized Bar to act collectively. The need to give the poor person Legal Aid is there. The will to give legal advice and legal representation in Court on a voluntary and free basis is also there.

What is needed is a consciousness that the giving of Legal Aid must be a collective act of the organized Bar.

The medical profession gains a great deal of goodwill from the public because the doctors advertise in one way or another that free service is given to the poor person who needs it. There is no doubt that lawyers individually do a great deal of free work but the publicity is not there because the lawyer as an individual does not advertise.

Let us be frank about it: The Bar owes a duty not only to the public but to itself to provide this free service. What are we waiting for?

It is easy to say: "Why doesn't somebody do something?"

Recently a meeting was held of the younger members of the Saint John Law Society and a group was organized, with Mr. Erskine Carter as chairman and Mr. Robert Macauley as secretary. Considerable interest was shown and enthusiasm was engendered.

A report was brought in by this group and will be presented to the Saint John Law Society at its annual meeting. It is to be hoped that the Saint John Law Society will vote in favor of the establishment in Saint John of a Legal Aid Bureau.

It is also to be hoped that other cities throughout the Province will follow the example set by Saint John.

For the record: Mr. Guss has written to lawyers in Fredericton and in Moncton and has also been in touch with the welfare bodies in Saint John and we understand they are heartily in favor that something be done. In other words, it is now up to the Law Society.

THE BUSINESS MANAGER WRITES—

It is rare that the Business Manager of a publication has an opportunity to express his thoughts in print, and I am thankful for the invitation I have received to do so.

Our publication, as you no doubt know, is distributed without charge to all the members of the Bench and Bar in the Province. This is done so that we may reach all the barristers and judges, without having to depend on their memories to begin and renew their subscriptions. This places the burden of the cost of publication on those people who insert business cards or advertisements in the issues as they are put out.

We wish to thank the Barristers Society of the Province for their support and financial aid. Also, we wish to express our appreciation to the Barristers of the Province and the others who place their insertion in "Oyez, Oyez." We have many difficulties to overcome in our attempt to carry on. Without this help it would be impossible.

I personally wish to thank the members of the Business Staff who have worked with me for the past two years. The assistance and co-operation they have given me has been most heartening.

DOUGLAS E. RICE.

ADDRESS OF MR. JUSTICE IVAN RAND OF SUPREME COURT OF CANADA TO LAW STUDENTS OF UNIVERSITY OF NEW BRUNSWICK.

It is a great pleasure for me to be here today. Although it is forty-one years since I entered upon the study of law, I can say to you quite honestly that I am as much a student of it today as I was then. That seems to be the glory of this profession: such a variety of question and every one demanding its own new examination. All is kept bright and fresh and the process of the law school goes on to the end.

It is, then, as a fellow student that I speak to you. I have had some experience in this work of law, and if you don't mind I'll offer to you some of the lessons it has taught me in the hope that they may be of some benefit. As I am here only to raise questions of interest to you, yyou will not, I know, object if I am very practical in my discussion and if I walk along paths which we soon shall be treading together.

As you know, from the beginning of this year, no appeal in new litigation lies to the Judicial Committee of the Privy Council from any court in Canada. Now that the policy has been settled, I may perhaps refer to what I have thought almost a conclusive consideration of the question, namely, that sooner or later this country must, in the nature of things, have taken over full responsibility in this field, and that until that responsibility had been accepted, there would be lacking some degree of that vital sense, inhering in all courts of a self-contained judiciary, of their own coming of age and of the necessary quality of their administration. Canada thus takes on judicial autonomy, and I think the members of the legal profession, as well as the students and the teachers of law, should ask themselves whether such a significant event calls for the re-examination and re-appraisal of their objectives and standards in relation to the future administration of law in this country. I am disposed to think that it does, and for that reason I presume to call your attention to it.

We shall best, perhaps, be able to come to a sound opinion on that question by assessing the work done over the past seventy-five years by that Committee. It is unnecessary, I am sure, for me, in this city, to dwell at any length upon either the quality of its judges or their adjudications. The administration of justice in Great Britain is of a standard unsurpassed by any that has existed among men. In the conception of the judicial function, in the independence and objectivity of judges, in the technique of legal reasoning, and in the processes of judgment, the courts of that country have reached full maturity.

The contribution made by the Committee to the structure of Canadian law, constitutional and general, has been immeasurable. In both fields we have been the beneficiaries of great legal ability. In Lord Herschell, Lord Watson, Lord Macnaghten and Viscount Haldane, to mention a few of the architects of the interpreted constitution, there were judicial minds of the first order; and in the general field, the authority of such judges as Lord Sumner, Lord Dunedin and Lord Atkin, among the many of eminence, and that of the present members, will long remain a guiding light in the ceaseless task of dispensing justice which we now take over. In this we see how "the old order changeth, giving place to new"; but to those magistrates the legal life of Canada will always be under obligation.

Let me briefly enumerate what I think the salient characteristics of the method of that Committee. There is first the thoroughness of oral arguments, of the examination of both fact and law; nothing is left indefinite, there are no dark spots, no point of difficulty is avoided, every authority is consulted, the tangled maze is reduced to order and made ready for adjudication. The acute analysis, the subtle distinction, the apt analogy, the exposure of fact and law to every possible aspect, the mastery and competence of it all; by these, the art of advocacy and of judicial debate, judged by any criterion, is exhibited on the highest level. The reasoning is seen to proceed not only from broad and intimate familiarity with precedent and principle but also with that sense, in their many aspects, of surrounding matters, the habits of men and the rhythms of their lives, which communicates strength and realism to judgment.

That, then, is the standard to which we must address ourselves and our future performance; and if we appreciate fully the character of what they have bequeathed us, we will recognize, in the responsibility we now bear, a challenge to the best effort and accomplishment of which we are capable. In this we must never forget that the quality of the bench is a reflection of that of the bar.

It is not my intention here to consider educational methods to be followed in a law school, but I would like to emphasize briefly some characteristics and aspects of legal training which I think essential to the development of competency in a profession whose work remains, and I think will always remain, of supreme importance to the management of civilized society. The task of the law is the working out and the application of rules and formulas to the reconciliation of conflicts between the multifarious interests of the community. Those adjustments demand a general consistency, and in the maintenance of that, as you can see, you will find yourselves making various degrees of acquaintance with the most diverse matters and situations. You are, in short, to exercise the function of harmonizing the infinite variety of social relations, by the endless repair of clash and disorder.

In essence, law is a part of the field of government. We distinguish between political government and the legal order, but they both operate in regulation of conduct and action in society. It seems to me, then, that what one might call a general political literacy is one of the important requirements in the equipment of a lawyer. He should know in an intimate way the country's constitution, its political institutions, their laws, procedures and conventions; and possess a general knowledge of their history and developments. This should include the weary struggles of political martyrs over the centuries to achieve those liberties which he now enjoys. That constitution is a skeletal structure of fundamental ideas within which the life of the country is carried on under political and civil law.

Given that understanding, the student is introduced to the actual matters and workings of the law. To them he is indeed largely a stranger. Neither the words contract, tort, trusts, equity and all the rest of the legal vocabulary, nor the matters underlying them, mean little, if anything, to him. These matters are the transactions and relations between men; and it is with thin material that he commences to erect within his mind a systematized body of thought intended to correspond with what he will meet later in actual experience. He is begin-

niing to associate human action with rules of law and with legal effects; but that association so far is only intellectual, something taken on trust, lacking the element in education of conviction.

Now, what does such an undertaking on his part call for? Law, dealing with human behaviour, is of the utmost practicality; it constitutes the bod yof rules, positive and negative, in accordance with which people can get along together with the least trouble. They are or should be of th eessence of the practical wisdom garnered from centuries of experience ;and nothing in experience is, therefore, irrelevant to his purpose. It is told of Lord Mansfield that to a friend, not a lawyer, proceeding to a colony as Chief Justice he gave the advice, that he should never hesitate to give his judgments but never to give any reasons for them. This reflects both the nature of judgment in most ordinary matters and the special and artificial reasoning developed in the law.

You ought, I think, first to endeavour to become artists in thinking. What I mean by that is not to be achieved by anything short of the intelligent and relentless exercise of your mental faculties. I recall an address given by Sir John Simon in, I think it was, 1922 before the Canadian Bar Association at Ottawa. It was an address on the art of advocacy, and I recall the three rules which he laid down as essential to success: they were, the first, the second and the third of them, Unremitting Toil. But there are, I think, certain means and methods by which that toil can be made pleasanter and more effective, by which artistry can, in greater or less degree, be acquired.

There is the imagination: interpenetrating all thinking, it can, like any other faculty be strengthened and made a powerful instrument by its conscious use. It will enable you to carry facts and situations backward or forward to new examples or illustrations; it will enable you to look at a problem not only in one or two dimensions, but as if it were a centre within the dimensions of a globe, in which it presents an aspect from every point on the surface. It is, I think, the culmination of legal analysis and development to work out a problem in that universal sense, or in other terms, completely to rationalize it. You will come to understand that no fact exists in isolation, that we live in an invisible web of relations to each other and to things, and if you take any simple matter in law dealt with in the aspect of A and B, you will soon learn by searching that there are other aspects between A and C and D and on towards the end of the alphabet. The disciplined imagination, allied with the reasoning faculty, by summoning up all pertinent factors, and ranging about their circumference, enables you to effect that global appreciation with clearness and conviction; and its long continued practice will furnish you with a power of great facility and of incalulable benefit. There is likewise its capacity for pictorial representation. It is essential to a lawyer that he be able to reproduce rapidly in his mind the factual scene or event with which he is dealing; and again that accomplishment may become largely the product of the conscious effort of imagination.

By that use, also, you will be enabled to enter into the minds of others, to recreate the thoughts, passions, intentions and volitions as they operated in the unseen portion of the external situation which you are examining; the subjective field can, in this respect, be compared to the submerged part, the much larger part, of an iceberg; and perhaps we can gather from this that lawyers should look beneath the surface

of things if they would avoid grief. The reconstruction of matters of objective fact alone — in the ordinary sense — is difficult enough, but that of these states and processes of mind and feeling is so far more so; but that invisible world will ever be of vital signficance to your problems; and you must equip yourselves, figuratively, to be skilled and courageous explorers of its depths. For this, in addition to imagination, we must not only obey the Socratic injunction, to "know thyself," but avail ourselves of the present-day knowledge and theories of psychology. One must, in fact, become acutely sensitive to the whole range of reactions, a response you can see instinctively exhibited by the great lawyers in moving human dramas. But you must constantly remind yourselves that situations of life with which you will deal are not made of dead elements; they are alive and pulsing with thought and feeling; and in rebuilding them you will be driven to summon up all of your insights under the compulsion of your imaging power.

Allied to the imagination is the conceptual function. Here artistry can be shown at its best. In a field of fact you will have given a certain number of points: your task will be to bring them within an attractive mould or picture, an intellectual conception. It will be of advantage that it bear features similar to those of some known formulation to which the law has already attached an effect. You thus make use of the old but always influential means of anaogly to extend legal decision. What is needed here is resourcefulness and judgment in fixing the aspect and setting from which the new matter is to be viewed, in the use of the most realistic perspective.

To illustrate concepts generally, let us consider for a moment that of negligence. This is one with which you will have a great deal to do, and at the outset you wil try to form a mental image of the idea which it carries. How can that most advantageously be done? This particular subject, in its general outline, lends itself to direct perception of what is most important, its underlying matter. Let us, for our purpose, envisage the whole body of active society, and ask ourselves what we observe as prominent characteristics in its conduct or behaviour. We see, as we look upon it, general uniformities of action: we move along a highway on the right hand side: we pause before driving ahead at the risk of collision with others; in the use of property, we exhibit consideration for neighbours; preceding action generally, we contemplate possible consequences to others. Before us is human conduct manifesting itself witihn the restraints of civility, stopping at limits which we learn through experience to respect. In the language of the late Justice Holmes of the Supreme Court of the United States, we see the "common sense of the community" in action. These uniformities, followed in all but the exceptional case, set, as it is said, the standard of conduct: reasonable conduct, the conduct of a reasonable person when he is acting normally. When we speak, therefore, of negligence, we speak of a departure from those channels of behaviour which men have been led to make by the inherent necessities of conduct itself: without them social life would be intolerable. The law declares that to be a legal standard which the community has in fact already established; that is the important consideration; we see the rules arising out of the life which they control; and it would seem to me to assist in the initial grasp and in the subsequent development of such an idea, that what may be called the raw matter giving rise to the conception be thus broadly apprehended.

There will be difficulty at first in forming these complex ideas because of that scantiness of personal experience of which I have already spoken. You will come, I think, to see that only when we are able to

identify ideas with matter either of our own experience or what we have learned from that of others, do they bear a sense of authenticity. That fact lies behind the theory of the so-called case method: that the student familiarize himself primarily with the matters of fact from which legal rules and principles are drawn. Once some of these particulars have been grasped, the generalization of the principle can then be realistically perceived. What I am saying is merely that the personal experience of life by a lawyer is necessarily limited and he must supplement that immeasurably by a knowledge of as much as he can garner from the experience of others.

On this topic, let me add one more suggestion. Your aim must be to become a thinker in your own right. For that it is a desirable practice for a young lawyer first to endeavour to resolve a complication without help from others. Intellectual self-reliance and the capacity for the formulation of opinion represent the maturity of a lawyer and neither can be attained by mere patch work use of decided cases. Excessive initial dependence on authority weakens the ability to cope with the reasoning behind it. You may take it for your immediate purpose as it was said several centuries ago, that law is reason, and that you can make that reasoning process your own only by its constant exercise.

Your next step will be to enter upon action :you will be expressing yourselves both in writing and orally, and in what manner will it be done? In the work of a law office, you will have contracts, conveyances, pleadings and various other writings which are to be prepared, and which you must rely upon your own competency to express properly. Allow me to make a few observations on that.

I have become interested anew in pleadings. I am beginning to wonder how many present-day lawyers have ever caught the glimpse of artistry in drafting them? I am afraid that the liberalization of the statement of claim, by limiting it to the facts without conclusions of law, has had two harmful effects: it has tended to excuse the pleader from thinking out his case thoroughly in advance of pleading: and it has led to sloppiness in stating it. Now I can scarcely imagine any one disputing the view that the lawyer should be a student of language, if for no other reason than that language is one of the great implements of his profession. The heritage of the English and French tongues which we possess should rebuke us for the almost utter lack of that dissatisfaction with our ability to employ words which alone can hold us to a worthwhile standard. Who among us are tortured by repetition and overlapping, by tag ends of sentences and paragraphs, by the failure in logical sequence and development, in marshalling narrative argument, by the superfluous word, by the deadly and cumbrous legalism, by the weakening adjective? Who among lawyers seek for the greatest economy of words to convey the completeness of the thought? In preparing defences, how many master the logical course of broad denial, followed by limited denials until the last circumstance is isolated, in paragraphs of one or two lines? From my experience, very few. I have come to the conclusion that too many lawyers of today are either unfamiliar with or indifferent to either the history or theory of pleadings; and that they seldom address themselves to a thorough analytical treatment of what is or is assumed to be contained in them. I do not criticize merely bad habits in thinking, speech or writing; but I think we all must criticize ourselves when, in the presence of the skill and accuracy of the past, open to us for the taking, but to be modified in application to the changes in substance we have made, we find we have abandoned standards in an essential part of our art.

There is the mastery of the spoken word and the technique of oral action. You are the professional descendants of the sophists: you speak for others, in the forum of the law. What of artistry here? I understand it is now considered respectable to be fastidious in speech, and so far we are getting on. What of questioning? Let me take the direct examination. Do we ever strive for skill in winning from witnesses the story which we hope to persuade the tribunal to accept? Do we ever think of the blotch a leading question may make on that story? Apart altogether from the technical aspect of it, can anything be more destructive of value in evidence than that it should be out of the mouth of counsel instead of witness?

And then cross-examination, and here, too, I deal only with superficial features of the technique. Have we a distinct purpose for every question asked? Do we put short, precise, single questions? Do we exhaust every topic opened to the extent of our purpose or break off only with another purpose? Have we an ungovernable tendency to ask purposeless and unnecessary questions?

It may be that this art of examination suffers from the limited example available to the young lawyers of today, and the style of which, exhibited by leading counsel, he was formerly able consciously to absorb. The constant attendance of juniors at trial is the traditional mode of inculcating the skill and art of the examiner; but in most parts of this country we cannot count very much on that now. The absence of the specialist advocates as in England is, also, a handicap. We must resort then to other means; and why not the study of the performances of great examiners as given in the accounts of famous trials and elsewhere? I cannot think it would not be of the utmost assistance. But here, as elsewhere, it depends on the individual and his determination to attain to proficiency.

Advocacy before a court of appeal calls for special qualifications. Counsel must be master of every aspect of the legal questions. Here particularly analysis and the use of analogy can exhibit attainment of the highest order. The oral argument is not for the purpose merely of enabling counsel to state positions; it is the means by which the contentions and propositions of each party are to be tested and the controversy reduced to ultimate points if not to its determination.

To the accomplishment in these functions of the lawyer, which assumes a knowledge of the rules, let me suggest as its rounding out, an acquaintance with those generalizations which make up what we call jurisprudence. They enrich the content of positive law, and they enable us to see more clearly the summations of those rules into coherent and articulate order. It would be a great mistake to treat philosophic speculation as foreign to what, however practical, must remain a profession. Are we to become ashamed of scholarship? Is it to be ruled out of a profession which was among the first to engender it? Are we to remain ignorant of the great thinkers who have furnished us with the basic ideas of law and politics? Who gave us the notion that absolute political power resides in the people who may confer it or withdraw it where and when they choose? The philosopher John Locke, and you find the the entire body of law shot through with similar products of philosophic thought.

Now I have dwelt largely on one feature of a lawyer's performance: its quaility and artistry. I emphasize that because excellence in that sense means a terrifying sort of universal accomplishment, and to some

extent that is so. It is the most exacting of professions and it is essentially individualistic in its product. Your main object is to produce a well stored, sensitive, and imaginative mind, and a polished implement of reasoning. Your work lies in the processes of evolving justice. It is no mean function. I remember the valedictory words to one of his classes of the late Prof. Gray of Harvard: "Be proud of your profession." I give you those words today.

I have two purposes in mind: the first is to set before you the goals which are now come to the full circle. Can you imagine a greater honour to be accorded a Canadian lawyer than that his country should call him to its final court of appeal? And with that as its apex, look to the hierarchy of courts of which the Bar must prepare the members. Here again I suggest you keep your imagination active and maintain the hopes and visions of youth. We all have natural investments: but in the end the question will be, have we made the best of them? To prepare yourselves for these responsibiilties, should they offer, by quiet but indefatigable application to the mastery of your art, ought to be your first ambition; in the jargon of the day, raise your sights.

Here is my second purpose. With independence, with unremitting industry, with high standards and loyalty to public and private duties, we owe it to the people of this country to make of the legal profession an instrument of the highest competency in an enlightened administration of justice. The future of Canada will be one of great growth and achievements; her population will double and treble; her wealth will be staggering; her business life will take on tremendous dimensions; she will become a nation of strength and influence. But all that growth will carry corresponding responsibilities: and in this vital function which has been committed to our hands, we cannot permit any failure.

ENCAENIA SPEECH AT N. B. MUSEUM IN SAINT JOHN

I must first express my deep appreciation of the honour done me by the invitation to participate in this celebration of the one hundred and fiftieth anniversary of the founding of the University of New Brunswick. I have always had and still retain a degree of awe for a centre of learning. I remember contemplating the mysterious splendour of a university as I did that of a star "hung aloft the night"; it was a remote splendour, a sort of glory in isolation, which a profane presence might not touch. But I am glad to say that familiarity with such centres has not in me bred contempt. In them throughout the ages has the great universe of the mind been slowly constructed and expanded. Through them have most of the intellectual means of carrying out the endless quests of life been discovered; man's physical world has in fact been largely pre-fabricated in these intellectual workshops. We, on the other hand, are the workers in the field to whom those means are furnished for us. But President Trueman has given me some measure of reassurance and confidence in the graciousness of his invitation. My regret is that I cannot hope, in discharging this task, to acquit myself as your traditions of scholarship call for; I can only give you my own thoughts on what I shall speak, and thereafter throw myself on your mercy and generosity.

These past fifty years have been an extraordinary period in modern history, and to enable us to appreciate the transformed conditions in which we now live, it will, I think, be profitable to review briefly the significant events and developments which those years have witnessed in the life of this country as well as in the world at large. If, in 1900, we had been warned that by 1950 the world of Western Europe, the United States and ourselves would be locked in a struggle to maintain human liberty and democratic government, we should have looked upon that warning as the raving of a crank or a fanatic, and, as Caesar did the warning of the soothsayer, have passed it by. But that is precisely the issue joined between the East and the West today, and it behooves all of us to address ourselves somewhat to enquiries which may reveal the causes of that issue and the means by which it can be successfully engaged.

Just what generally was the social, economic and political outlook at the beginning of the century in this country? We were then, as we still are, a small population in relation to the immense area of the earth's surface which we administer. It was so scattered and so absorbed in home building and livelihood that it had little time for thinking of social questions beyond those of neghbourhood race and religion. We were concerned politically with consolidating the Confederation and creating a national consciousness. Our controversies were local and neither commercial nor intellectual interests extended in any considerable degree beyond the bounds of the Dominion. Immigration from Europe on a large scale had just commenced, and the western prairies were being opened to settlement. Vast railway expansion was creating two more transcontinental systems. Industrial activities were of minor importance, and the outlook towards labour may, perhaps be gauged by the fact that in many circles there was still a stubborn opposition to the principle of workmen's compensation.

The war of 1914 was the first violent impact upon that local absorption. It was an exposure to new and unsuspected manifestations of human nature which fell upon us like a violent assault. That, in

the existing civilization of what we thought to be peace, one group of men could set out to destroy other groups by the force of the most devastating engines of war ever known was a startling realization. The South African war had been on such a relatively small scale, and so remote, that our participation was more of the nature of an adventure than a grim encounter. But the World War sounded depths of the best in human beings of which either we had little suspicion or into which we abstained from enquiring. To some extent we had entered the front lines; with 60,000 Canadians dead on European soil and thousands of others brought home as human wrecks, the consciousness of social convulsion did to some extent at least become impressed on the minds of many.

The war was the occasion for assertions of national status. Our constitutional relations with Great Britain had long since recognized responsible government, and the occasional disagreement indicated a residue of colonial direction which was permitted to remain undetermined. Sir Robert Borden had successfully maintained his government's general control of the Canadian army and he likewise insisted that Canada in her own right should be a signatory to the treaty of peace. Not only did this take place, but we became a member of the League of Nations, which, whatever its weaknesses, failed not because of its faulty structure but because of its want of internal integrity. Even at that, as the pioneer organization, its accomplishment bears comparison with that so far of the United Nations.

Those relations were further clarified in 1926 by the declaration of equality of status between Great Britain and the Dominions. This was followed in 1931 by the Statute of Westminster, whose provisions in substance recognized the Dominions as independent members of a Commonwealth of nations having the common bond of a several allegiance to His Majesty. That formal relation would have had much less significance had it not been that it was the outward symbol of an underlying community of traditions, interests and attitudes, of the fact that Great Britain and the Dominions were built upon foundations of the same fundamental conceptions of society and of government.

In 1917 the revolution occurred whose reverberations are still thundering in the East. From the futile motions of Kerensky its direction passed under the control of Lenin and the Politburo. Since then we have watched its evolution through socialism and communism into the messianic imperialism of wind and power, at length apprehended by the western world.

We later beheld the march on Rome of the Fascist legions under Benito Mussolini, and we became acquainted with the bestial barbarities inflicted upon their opponents. We saw an old civilization in fluidity and disorder and its government, breaking with the past, attempting to impose upon it conceptions beyond its capacities or character to realize or maintain.

A similar process was at work in Germany. A social upheaval was underway to which the serious attention of the world was drawn in 1933 upon the formal accession of Hitler to the Chancellorship, and we know what followed during the next five years. We saw the deliberate plan to bring the government of the world under German hege-

mony. Every conceivable instrument of social influence was called into service; the lie itself became an instrument of national policy; and the calculated obliteration of millions of human beings, an incident to main objectives. Feeling, sympathy, pity and fear were erased from human sensibility.

Underlying these social manifestations was an equally revolutionary progress in science. The principle of relativity had been demonstrated by mathematics seemingly inherent in physical substance. In 1931 or thereabouts, Field Marshal Smuts, in an address to the Royal Society in London, spoke of the "social lag" as contrasted with the advance of science, and suggested a holiday in scientific research. Since then, in the field of nuclear physics, we have reached the point where, as recently declared by an atomic research scientist of Canada, by exploding what is known as a hydrogen bomb, we may, as a possibility, produce a chain reaction in the decomposition of matter that within the space of minutes may render this globe either the charred remains of a dead planet or a raging inferno of a satellite sun.

At the beginning of the century, too, we were introduced by Freud to the shadowy regions of the sub-conscious. Self-consciousness was set loose to become a powerful agent in social conduct. It has indirectly made us vividly aware of the use of economic, social and psychological power, the technique of its mass accumulation and its fantastic exercise; and although the will to action has enabled us to move mountains, it has also furnished us with correspondingly menacing instruments for destruction.

As we recall the events of the 1920's, we can trace more clearly the course of things ending in the disastrous depression of the 1930's. The introduction of Canadians to widespread unemployment and its public relief revealed economic aspects of the modern world and its organization of whose possibilities we were as a people quite unaware. We came to realize that we had become implicated in the relationships, particularly economic, of the world order. We saw, for example, the significance of the grain trade to the economic life of the country, and what the cessation of that trade meant to the inhabitants of the prairie provinces.

Throughout the second decade after the war, in Russia, revolution was consolidating; in France there was the confusion of Babel; in Germany and Italy expansionist plans were nearing execution; in Great Britain an evolutionary transformation was underway; in the United States the welfare measures of the New Deal were on the march. This furious ferment set the stage for the holocaust of 1939.

What are the legacies of that frenzy of war? We see a seething humanity, a humanity in revolt, over almost the entire globe. What are its basic manifestations? What do they portend? Do we see man, doomed by his nature, driving forward to his own annihilation? To a high degree, what we see is a conflagration of human resentment, resentment at social injustice, at exploitation, at insult to man's spirit and dignity; humanity is proclaiming as truth that it is one, made of the same stuff and from the same mould. In the light particularly of the political ideas and example of the West, what else could have been expected?

To what end have we been educating men and women? Certainly it has not been to subservience and the acknowledgment of different clay. It has in fact been directed largely towards fitting them, professedly on the basis of equality, to operate the machine; but we must ask the antecedent question, to what end is the machine?

The conflict between totalitarianism and democracy arises in part, it is said, by reason of the isolation of man from a necessary creative intimacy with work and from each other; that in industrial mass action they have become robots; that in the only world they know, they cannot feel themselves to be of it. As the standardized and stereotyped functions increase their grip, isolation becomes deeper and the decay of interest in work extends to other interests; the creative sources dry up; anxieties follow sterilities of mind, loss of confidence and resourcefulness; even the warmth and reassurance of family life, so far as they remain, have become impoverished.

What is offered the worker by the communist is a release from these burdens; release from his bewildered thoughts, his weariness, his thankless role, the tensions of responsibility and the struggle for things. He is invited into a burdenless communion of all who labour, a communion that promises a new purpose, the satisfactions of identity with a world that is theirs.

How are the fatal dangers of this latest spider and fly tragedy to be shown to democracy? How is it to be demonstrated that, in addition to the falsity of the utopian element, there are in this paradise inexorable feuhrers who intend to dictate and masses who must submit? If anything has been established in the past thirty years, it is in the old knowledge that such a concentration of absolute power means the steady corruption of the one group and the steadily deepening enslavement of the other. We ask how it is that free men as an act of liberation should surrender freedom for a mess of pottage, and we treat it as an amazing paradox; but is it as simple as that?

The picture is false again because the test of any way of life is its capacity to endure in relaxation. Under the impulse of religious fervour or other emotional exaltation, a capacity to dedicate or sacrifice may for a time find its full expression; but for the mass of life, exaltation wanes, and in the normal condition, to which, however it may change, we must ever return, life means to every individual inescapably, apart from the bond of labour, some measure of strife with himself and with environment, some degree of isolation.

While these unfoldings have been taking place, we have been proceeding largely unaware of the nature and the foundations of government. Certainly in this country we had generally assumed that democracy, as government by parliamentary representation, had become a permanent establishment; but the slightest appreciation of the convulsions throughout the world shows how mistaken that view is. We had assumed that government of the majority, with measured concessions to minorities, would meet all problems; that rights of property and of civil relations were natural rights which no law should abridge, that our legislative constitution in fact partook of the character of an order of nature itself. Through inertia, the influence of the education of the few, and the traditional deference to class eminence and distinction, that notion of stability became fundamental. But with the opening of Pandora's box of ideas, the liberation of mind and speech, the processes of education and the moving scene of the last forty

years, we see that government rests in the minds and actions of men and not in the structure of nature.

It seems to be a universal law that any idea or conception or course of conduct pursued logically beyond a certain limit will be found changed either in quality or in effects. For example, the rigidly logical development of the concept of private property in the setting of a legal order and an enlarging social community has been found to transform itself into that of an instrument of economic power of an entirely different nature and a scope that in certain circumstances threatens the very freedom from which it arose. Similarly, liberty pursued far enough degenerates into license. We see the same law at work in the fields of physics and chemistry; and it can be perceived in social process generally.

From the stark evidence of these years and of the laws which have been demonstrated, we must conclude, I think, that if we are to have freedom and stability of the social order, we must, as one condition, accept the principle of limitation and diffusion of power and interest, maintaining equilibrium by the rational processes of compromise and accommodation. In the totalitarian state, total power has become concentrated in an oligarchy; the salvation of democratic freedom depends upon the distribution of total power in a multiplicity of individual interests. The maintenance of equilibrium in that mass of conflicting forces is the function not only of government but of social control generally. There is nothing in government controversy that is not susceptible of rational analysis and adjustment; and it is by that process that the dominance of any power and the strangulation of others can be prevented. Civilized life becomes a state of things in balance. Accepting the premise that we are members of what may be called a granular society in which the individual constitutes the essential unit, we must at the same time realize that he as well as his life are what they are by the fact of their involvement in a social community; and that it is in the service of the multitude of interests of the community as well as those of the individual that the balance expends itself.

With such a fluid and seemingly unstable operation of general control, the foundations of such a community must obviously be built of common acceptance of permanent and fundamental nature, that is of those ideas and conceptions of the broadest scope upon which we can and must agree as basic and lasting assumptions; and social stability will be achieved in the degree that these common acceptances become strengthened and multiplied. With the alternative of chaos becoming increasingly apparent, in proviisonalism, even to the ideological fanatic, must lie the only hope of survival.

You will recall that Mr. Toynbee, in his world history, sees the evolution of human organization in terms not of nations or states but of civilizations. Western Europe and America today broadly constitute such a civilization. But that means that within that vast body of human beings there exist certain common characteristics; and in the perspective of a period considerably shorter than eternity, can it be doubted that in a slow process of change those underlying characteristics and uniformities will spread and deepen among men? And that even more so than they constitute the distinguishing marks of a civilization, do they constitute the security of order and solidarity in every community?

To the effectiveness of these basic assumptions, tolerance of upper differences is essential. Though tolerance does not logically require us to concede the possibility that any view we may confidently hold may be wrong, yet it is in fact greatly strengthened by that concession. With such a mild skepticism of our own infallibilities and with tolerance as the elastic bond of the community, we might begin to learn the nature of that broad liberty and peace of mind which the privileged amongg the Greeks once enjoyed.

I come to the role of Education. Let us make no mistake about it: there is going to be a wider sharing of things; but if we would avoid the barrenness which that alone will bring, there must be a fundamental change of emphasis on standards of value and objectives; we must begin at once to look to the untouched resources of minds and talents and faculties with their infinite opportunities of individual enrichment as the new El Dorado open to free exploitation by every one .

To maintain then, the government to which we have become habituated, we must engage ourselves in deeper understanding of the organized life of which we are a part. What we place first among the desirable objectives are the freedoms of the individual and their underlying foundations. But freedom is to be measured by the extent to which we accord it to those with whom we disagree, even violently disagree; and the conscious cultivation of tolerance which can absorb the shocks of opposed opinion, I put among the first ends of education in its social aspects.

Fundamental to that government is the rule of law for all. We must conceive the legal order, flexible and resilient however it may be, as standing in isolation, unaffected by any considerations except those which have been prescribed as universal in their application. It is said that the first sign of the break-up of the German state was the corrupt betrayal of the administration of law to the executive. A legal order stands as a bulwark against oppressive power; it is, in fact, the dictatorship of social reason. But it may be destroyed by the insidious process of piecemeal encroachment. The only guarantee of its integrity lies in its integrity as a whole; the technique employed by Hitler is too vivid in memory to permit of any misconception of what compromise would mean.

Basic to the maintenance of standards of living is a higher degree of economic literacy. We see both in England and the United States a deepening appreciation by Labour of the necessity for the understanding of those factors and operations which furnish the material life of the nation. It should be obvious that before goods can be distributed they must be produced; and the powerful unions now maintain economic departments as necessary to their functioning. By whatever means it may be done, greater understanding of these matters in all their bearings must be diffused throughout the body of citizens.

An appreciation also of the nature and effects as well as the dangers of the various modes of power and their exercise must likewise be diffused. The understanding of the effectiveness of concerted or monopolistic action or inaction must be accompanied by the realization of its complementary responsibility; no coercive power can be permitted to threaten the community as a whole.

With the multiplication of education agencies, there is the tendency, following the law of debasement, for standards to suffer.. What we seek is the erection of a social order in which ideally every man becomse a centre of judgment, initiative and discipline. We are in the full flush of materialistic philosophy, not only in the Western world but in Russia and the entire East; but even if it were otherwise, to expect of men singly or in the mass even lip service to what we generally agree are the paramount values while they are in hunger or destitution, is, to say the least, futile; and today enlightened leadership accepts the necessity of a minimum standard as a condition of amenability to rational social appeal. With the engagement of the majority chiefly in attaining that minimum, the maintenance and spread of cultural values becomes all the more clearly the duty of educational leadership. Under the pressure of the example of the United States, in the development of its massive wealth and in its individual prizes, our course has been powerfully influenced in the same direction; and while we must not underestimate the role which the apparatus of life must play, we must protest against its attempt to usurp the ultimate ends of human effort.

The weaving of values into the texture of experience is a slow process, and when life at large is in the open, as it is today, example takes on a new importance. Disillusionment in what formerly held men, as it was said, to accept their lot, now derides teachings that contradict practice. Assuming the desirability of other than material ends and values, one condition of their general acceptance will be the example of leadership.

I suggest, then, as of first importance, also, the stimulation of the instinct of artistry of all classes in all fields of action. There is a void in life generally which through the exercise of imagination and intelligence must be filled. Apart altogether from the necessity of a sense of finish and satisfaction in our everyday work, and from the interest in the great literary heritage we possess, the increasing free time of men and women must be more profitably employed, and it is here that creative action will not only find its opportunity, but will meet the desireratum of modern civilization. In painting, in music, in the drama and the dance, we must arouse the latent powers of the individual to the artistic expression of the spirit, the thoughts, the feelings and actions of men; and in the limitless possibilities of craftmanship, the sterilizing effect of mass and specialized occupation will find its antidote. These are not dreams of idealistic visions; they are ends within the reach of every person. The movements that are actually underway in this country hold the greatest promise of success, what is needed as a guarantee of success is the increased appreciation of their worth. The unremitting effort, the refashioning processes, the striving for economy, the demand for fineness; only when these characteristics of a despotic critical faculty have been made our own, will our achievements be worthy of our opportunities.

I have in mind chiefly the extended education of those who can draw on experience in forming their social ideas and conceiving the duties and privileges of citizenship. Education to them is the expansion and deepening of the understanding of experience, of awareness of the forces to which they are subject, and of the degree in which they can consciously affect them. This requirement of education brings home to the individual his personal responsibility. If he looks about, he will find himself enmeshed in an invisible network of relations with

his community, and he will see his course to lie in consciously developing those adaptabilities by which, through underlying stability, idiosyncracies shall be free. At the same time he will enrich not only himself but his community by his fidelity to standards of quality in his accomplishments.

There remains the task of wider social reconciliation. With the heterogeneous nature of modern society, with its many and diverse racial groups, with the demands and manifestations of individual and group freedoms, with the infinite degrees of intelligence and self-control, and in the differences of traditional disciplines, we must examine ourselves to see how far it is necessary to maintain the age-long strife engendered through different intellectual interpretations of the ultimate mysteries; whether we should not in good faith and reality accord others the right to the sanctity of their own contemplation of them. In our relations with our neighbours, let us learn also to practise those recognitions which seem to be so necessary to the vital needs of the personality. The alternative is plain; destructive powers and changes by convulsion no longer represent merely new methods of working out our destinies; we have brought ourselves to the point at which further resort to war or insurrection may mean total obliteration.

For meeting these demands, the universities must take the leading roles. Under imaginative leadership, by extending and expanding their traditional functions built up over the centuries, they will be able to stimulate an intellectual and cultural renaissance throughout this Dominion. In this Province we do not have the material wealth of perhaps most of the other provinces, but we can say with confidence that we possess all of those conditions and factors which are essential to success in such an enterprise. Canada is now, in every sense of the term, on her own resources; and no greater objective can lie before her people than the enhancement of her social intelligence and her artistic spirit. No university is better equipped to perform its share of such work than that under whose auspices I am speaking.

Canadians may take some satisfaction in their government. It is, I think, widely recognized that in the integrity, character and ability of her public servants, Canada meets high tests. That we have a responsible and wholesome citizenry was demonstrated during the war; the regulation of the economic life of this country, maintained for so many years, was by economists in several countries thought to be an impossible task; it was successful because of the responsible and articulate public spirit of Canadians. This is a moment for decision to make of this land one in which democratic government, rooted in freedom and responsibility, shall stand against all the storms and assaults that may beat upon it.

ARTHUR N. CARTER, K.C.

Arthur N. Carter, K.C., LL.D., President of the Canadian Bar Association, comes from two well-known New Brunswick families. On his paternal side he is a descendant of John Carter who came to what is now this Province from Yorkshire, England, in 1774. His father, Edward S. Carter, was for many years an outstanding newspaper editor, author and publisher, and his uncle, William S. Carter, was Superintendent of Education for New Brunswick and President of the Senate of the University of New Brunswick, while his brother, George E. Carter, holds a high position of responsibility with the Canadian Pacific Railway in Montreal. On his mother's side the family of Fenety is all well known in our provincial history. George E. Fenety, his grandfather, was a Mayor of Fredericton who did much to beautify that city, was King's Printer and author of such books as "The Life of the Hon. Joseph Howe."

Arthur Carter was born in Saint John in 1891. He was educated in the public schools of Saint John and Fredericton and graduated from Saint John High School in 1909. He then attended the University of New Brunswick, receiving the degree of Bachelor of Arts in 1913. The same year he was awarded a Rhodes Scholarship for New Brunswick, a distinction which later was conferred upon both his sons, a unique event in the history of the famous scholarships. The First Great War interrupted his studies at Oxford University and he served with the British Army from 1914 to 1918, attaining the rank of Captain in the King Edward Horse, 8th Battalion York and Lancaster Regiment, and also winning the Military Cross. Resuming his life at Oxford he received the degree of Master of Arts from that University in 1919 and Bachelor of Civil Law in 1920.

Returning to Saint John, Dr. Carter was admitted to the Bar of this Province. He practised with the firm of Weldon & McLean and then became associated with the late Chief Justice and former Premier John B. M. Baxter in the firm of Baxter, Lewin and Carter. After Dr. Baxter's elevation to the Bench, Arthur Carter continued in the firm with Mr. J. D. Pollard Lewin, K.C., until a few years ago when he left that firm for a practice of his own. Recently his son, Erskine Carter, returning from studies at Oxford University, joined his father in the practice of the Law. Arthur Carter has built up a large practice in his native city, principally in corporation work and is counsel for a number of large and important companies such as the New Brunswick Telephone Company. In his practice he shows his extensive reading of the law reports, his grasp of the legal principles underlying the cases, and the soundness of his application of these principles to the case at bar. He is also gifted with a remarkable memory which enables him to retain many details of what he has read.

For a number of years Dr. Arthur Carter has been prominent in the activities of the Canadian Bar Association. He was a prominent member of the Section on the Preservation of Civil Liberties and presented the report of that Section at the Winnipeg meeting in 1946 when the manner of the prosecution of Canadian communists was dividing legal opinion in Canada. He served as Vice-President of the Association for New Brunswick, and then as Dominion Vice-President. Last autumn he was honoured by the Canadian Bar Association in his election as President of that great body of lawyers and judges, the

only resident New Brunswick lawyer to attain that position, although another native of this Province, the late Viscount Bennett, held the high office in the year 1929-1930. Arthur Carter has also of course been active in the local legal organizations and has been President of the Saint John Law Society and of the Barristers' Society of New Brunswick. As a continuing member of the Council of the provincial society he remains active in its work of supervising and promoting the interests of the legal profession in this Province.

Dr. Carter has had a long and prominent connection with the University of New Brunswick and with the Law School. He was first a lecturer with the predecessor King's College Law School, and has continued as a lecturer through the full period of the life of the U. N. B. Law School in Saint John. Thus he is known to most of the practicing lawyers of New Brunswick as an expert in Constitutional Law. He has been a valued member of our Faculty serving on the curriculum committee, the examining committee, etc. For several years he represented th Alumni Society on the Senate of the University of New Brunswick, and in February of this year the University recognized his services as a lawyer, a lecturer and an alumnus as well as his position as President of the Canadian Bar Association by conferring upon him an honorary degree of LL.D. at the special Encaenia held in Saint John.

Dr. Carter has been active in many organizations relating to the welfare and culture of this community quite apart from legal and university circles. The Free Public Library and the New Brunswick Museum both owe a great deal to his wide knowledge, his meticulous attention to detail, his administrative ability and his invariable attendance at Board meetings. His interest in Church matters is evidenced by his position of warden of St. Paul's Church and the excellent historical sketch of that Church which he prepared a few years ago. He has been President of St. George's Society of Saint John, a member of the Executive of the Red Cross Society, a member of the advisory committee of the Y. W. C. A., and of the advisory committee on rehabilitation under the D. V. A.

Arthur Norwood Carter in 1921 married Edith Ireland, a member of a well-known Ontario family, and Mrs. Carter has been an active and helpful partner with her husband in all his legal and community activities as well as a gracious hostess in her own right. They have two sons, Erskine and Norwood, both of whom are following in their father's profession, the elder, Erskine, now lecturing at our Law School on Contracts and Sales, while the younger, Norwood, is studying Law at Oxford University.

The faculty and students of the U. N. B. Law School at Saint John are proud of the fact that one of their faculty members is now President of the Canadian Bar Association, and while fully appreciating this honour which has come to Saint John, are also mindful of the fact that such an office seeks its man and that the great talents, abilities and manly qualities of Dr. Arthur N. Carter place him in an equal position with the other outstanding Canadian lawyers who have presided over and directed the activities of this Association in the past.

REPORT BY B. R. GUSS, ESQ., ON THE MID-WINTER MEETING OF THE CANADIAN BAR ASSOCIATION HELD IN SAINT JOHN, N. B.

The mid-winter meeting of the Council of the Canadian Bar Association held at Saint John the week-end of February 9, 1950, served a purpose which transcended the usual conventional objectives. It did that too. There were the usual progress reports of committees and sections, but above and beyond that there was a feeling of warmth and friendliness, a real esprit de corps permeating the atmosphere that will be difficult to match in future. Nor does this mean to indicate that it was a rubber-stamp Council; not at all—there was ample debate on everything: On the Inns of Court Funds, on the Canadian Bar Review, on the Survey of the Legal Profession, on the Junior Bar.

The lawyers of the Loyalist City opened hearts and hearths and all those visitors who had indicated their intention of arriving on Thursday were entertained at the homes of the Saint John members of the National Council.

Despite the high holiday spirit thus engendered and despite the length and warmth of debate the meetings were conducted so expertly by Mr. A. N. Carter, K.C., the President, that they commenced and ended on time. Most favorable comment was heard on all sides at the high standard set in the business transacted and the hospitality offered.
The usual meeting of the Executive of the Council of governing bodies of the Legal Profession took place Thursday morning, and on Thursday afternoon the program committee from Washington met and deliberated as did the Legal Education Committee.

On Friday morning the Advisory Board of the Association met as is customary.

The Council meeting opened promptly at 2.30 at the Admiral Beatty Hotel. Mr. Carter welcomed and greeted the members warmly in apt phrases. "This meeting," said Mr. Carter, "affords us in New Brunswick an opportunity of showing in a small measure and as it were by way of token the feeling of warm friendship which we have for our fellow members of the Canadian Bar Association. Regretting the absence of Mr. Harold Gallagher, the President of the American Bar Association, Mr. Carter went on: "I am very happy however to welcome Mrs. Olive Ricker, the very able and very charming executive-secretary of the American Bar Association. What there is to know about Bar Associations and their arrangements and personalities, Mrs. Ricker knows—we are very fortunate in having her with us to give us the benefit of her wide counsel."

The Honorary Secretary, Andre Taschereau, read his report and made a number of important recommendations. That the Association:

1—Study Lawyer's Reference Plans and Legal Aid.
2—Give more attention to Legal Education.
3—Give some thought to relations with the Public.

He also mentioned with regret the absence of Mrs. A. N. Carter and Mrs. Stanley McQuaig, who were unable to attend due to illness.

The report of the Honorary Treasurer, Paul P. Hutchison, K.C., showed that the financial position had been bettered by over $6,000 during the fiscal year of 1949, although expenditures had been increased by approximately $4,000. Mr. Hutchison felt that the trend of increasing expenditures was not a satisfactory one, and recommended that the report of the annual proceedings be carefully edited and that thought be given to reduction of expenditures generally and that money requests should pass through the Council. His report was adopted with the recommendations.

From the report of L. V. Sutton, K.C., chairman of the Membership Committee, it was learned that as of January 31, 1950, the Association had 4,275 members. Mr. Sutton pointed out that the 777 members of the British Columbia Bar are members of the Canadian Bar Association.

Mr. Sutton's report touched off a warm discussion in which General Clarke of Vancouver participated: "What is being done to follow the British Columbia example?" asked General Clarke. General Clarke challenged: "Our Bar wonders if Lawyers in other Provinces are as interested in the Canadian Bar Association as they should be?" Mr. Sutton pointed out then there were three views: (1) That all lawyers must become members of the Canadian Bar Association; (2) That there should be a drive for members; (3) That there should be no drive but our appeal for membership should be through our good works. The report was accepted.

Mr. Hutchison in giving the report for the Investment Committee stated that there had been no change since the last meeting.

A report prepared by J. A. Campbell, K.C., on the Inns of Court, read by Mr. E. Gordon Gowling, K.C., disclosed that approximately $17,000 had been raised although a minimum of $25,000 had been set. Members did not seem to understand the situation, but a full explanation by D. Park Jamieson clarified the matter and a great deal of discussion ensued. Finally in answer to the questions which had been posed by Mr. Campbell's report (a) How long should our activities continue; (b) How, when and in what manner shall the money be distributed? it was resolved that the work of the Inns of Court Committee in respect to the collection of funds should be wound up by July 1st, 1950, provided that the minimum objective of $25,000 be raised by then. It was further resolved that the Council authorize the committee to dispose of the funds as it thought best, with the approval of the majority of Provincial Chairmen, provided no part of the money be sent to England in cash unless the committee be assured that the money be not used to reduce the amount of insurance or indemnity payable to the Inns of Court.

The Junior Bar next came in for warm discussion. B. R. Guss had been named to head a committee consisting of Mr. Justice Barlow, Alexander Stark, and Stanley Biggs, chairman of the Junior Bar Section, and Jacques Viau. Mr. Guss outlined the main points of a constitution and by-laws which the committee proposed for the Junior Bar. The matter was tabled for discussion for Saturday, when speaking to a motion proposed by D. Park Jamieson, K.C., and seconded by Wilfred Gregory, Mr. Guss pointed out that the Junior Bar Section had no prescribed field of endeavour and that it would be advantageous to the Association if the Junior Bar were given definite form and definite

work to do. It was finally decided that the Constitution be not taken up and that the matter be referred back to the committee for he purpose of organizing the Junior Bar in a manner similar to any other section.

The Canadian Bar Association Essay Competition next came in for discussion. Mr. A. N. Carter read a report that was prepared by Mr. Edmunds. It was decided to continue the Essay Competition for another year, and that the prizes be reduced as follows:—First prize, $500.00; Second Prize, $250.00; Third Prize, $100.00; and that the committee on the Essay Competition be: Chief Justice Williams, Winnipeg, Gustave Monette, K.C., Dean Cesar Wright, Toronto, and that students be not eligible for Essay Competition during 1950.

Mr. G. V. V. Nicholls explained that students had been eliminated in order to raise the standards and that essay competitions were not restricted to teachers of Law and practising lawyers in Canada.

The report of Edson L. Haynes, K.C., on the proposal to form a Canadian Medico Legal Society was read by Mr. Martin. It was pointed out that the success of such an organization depends on personal initiative and personal good-will and on the energy expended upon the work by each provincial group. After considerable discussion in which Mr. Martin, Mr. Owen, Mr. Harry Smith, Mr. George E. Edmonds, K.C., took part, it was decided to continue the work of the committee.

Mr. E. G. Gowling, K.C., then presented his interim report of the organization committee. It was agreed that $3,000 be allocated to buy equipment for the secretary's office and for a modern addressograph machine.

In spite of the great amount of discussion Mr. Carter conducted the meeting so ably that all the matters of business which had been set for Friday afternoon had been concluded earlier than anticipated. There were no "yes" men present as is evidenced by the heated discussions and the intelligent questioning of every item of business that was brought up. By unanimous consent it was decided to continue the meeting, and in the absence of Mr. John T. Hackett, K.C., the President, Mr. Carter, called on the Honourable C. P. McTague to give his report on the Survey of the Legal Profession. Mr. McTague pointed out that it was obvious that some sections of the Bar did not understand what is expected of them and Mr. McTague pointed out that the survey was a good thing for the profession and was not interested in individual returns. The returns were not to be used in any personal way but were to be tabulated as all statistics are tabulated for the benefit of the profession and the public. The Courts would also be considered and thought was being given as a result of questionnaires as to how to improve the efficiency of our Courts. The Hon. Mr. Justice Ivan C. Rand had been asked to prepare a report on Legal Education.

Mr. W. B. Scott, K.C., then questioned the value of the survey. He pointed out that it would be very easy for the inquisitive to find out how much each firm was doing. Mr. Scott also asked what good is a report of such a survey if it came three years later? Mr. McTague then replied that it would be of value to the profession to know what are the sources of income. When did a lawyer have his best earning year? How does one district compare with another district? How

many non-lawyers do lawyers employ? "Isn't it valuable," asked Mr. McTague, "if we can help dispel false impressions held by the public concerning our profession?" Mr McTague further pointed out that the Dominion Department of Statistics had carried out a similar statistical survey with regard to the Medical Profession and Dental Profession and the Druggists. The same or a similar form went out in the United States of America and also in England.

Mr. McTague pointed out that the survey did not want particular information concerning particular offices and that the survey does not assist the Income Tax Department to spy.

This cold page cannot begin to indicate how warm the discussion waxed and how much interest was shown in the discussion, until the lateness of the hour called for a motion to adjourn.

On Saturday morning, Mr. Richardson presented an historical and analytical report on the Canadian Bar Review.

Mr. Richardson pointed proudly to the fact that the Canadian Bar Review had taken a leading place amongst Legal Journals and the question before the Association was whether the position of editor should be considered as a career job? If so, a salary commensurate with a full-time position of a leading legal journal should be provided for the editor. The inevitable question of lack of funds was then discussed and means of raising more money for the Bar Review were suggested. Particular reference was made to the hiring of R. C. Hannah as an advertising solicitor to obtain advertising estimated to reach $18,000. It was suggested it might be necessary to print less than ten issues or that the number of pages be reduced. It was recommended that the position of the editor should be a full-time job offering a career to the incumbent and that as soon as money becomes available editorial assistance should be provided. It was hoped to be able to provide funds to permit the editor to travel to meet prospective contributors.

The advertising rates were agreed to be $60.00 per page and the committee was empowered to continue its investigation with a view to having the printing done in Montreal. The committee was to report again June 15th, 1950, and make further possible recommendations at that time concerning the editor's salary.

Mr. Carter pointed out that there should be no question as to whether the Review committee has authority to deal with the contingencies arising in June, 1950, and it was agreed that the committee should use its best judgment, should the funds available from advertising not reach the expectation of the committee. In general, the committee was given a free hand to deal with any contingency that might arise.

At this point, Mr. Carter reported on the Washington meeting and said that letters had been sent to the Chief Justices of the Provinces asking them to arrange the Court to enable the lawyers to attend the annual meeting in Washington from September 18th to September 22nd inclusive. Mr. Carter pointed out that the Mayflower Hotel in Washington had been set aside for the Canadian headquarters. Mr. Carter reported also in discussion with the Foreign Exchange Control Board and hoped that consideration would be shown adequate to the needs. It was obvious that numerable details had already been settled through

the diligent work of the President, Mr. Carter, the Secretary, Mr. Laidlaw, and Mrs. Olive Ricker, Secretary of the American Bar Association.

Progress Reports were then received from the Vice-Presidents of each Province.

Progress Reports from the following sections were also received:— Administration of Civil Justice; Civil Liberties; Commercial Law; Industrial Relations, Insurance, Junior Bar.

Mr. Scott again raised the question as to the purpose of the survey and the intent of it. Mr. Hackett replied that the survey was absolutely independent and that the resolution at Banff had created it an autonomous body. The survey, Mr. Hackett said was for the health and welfare of the profession and for the public which depend on our profession.

At this point the meeting adjourned to a most delightful luncheon tendered the members by Mr. A. N. Carter, who in his usual apt manner referred to the meeting as a useful and happy one and expressed his appreciation of the privilege of having the meeting in New Brunswick and warmly greeted the members and told them what a delightful thing it was for him to have all the members of the Council as his guests.

Mr. Carter's greeting was responded to by Mr. Owens, who expressed his pleasure at travelling a reasonable distance from Vancouver to attend the happy gathering. He came, he said, "from the mountains to see your hills, from the Fraser River salmon to see your fish, and from the Douglas fir to see your scrub." He referred to the standard of entertainment as being most high and referred feelingly to the absence of Mrs. Carter who had "made such a splendid contribution and whose influence had been felt. We miss her presence, her charm and her happy smile. We are happy in her good recovery and we ask Mr. Carter to carry to her the esteem and affection we all feel for her." At this point he presented to Mr. Carter a lovely bouquet of roses for Mrs. Carter.

When the meeting resumed in the afternoon the question of the Survey again was raised. Mr. Louis Ritchie, of Saint John, said he still felt that the Council should send a circular explaining why the Survey was being conducted.

Many members expressed their approval of Mr. Ritchie's suggestion.

The discussion was joined by Messrs. MacLaren, Jamieson and Chitty. All the speakers pointed out the importance of the Survey and that it would be well to contact the various governing bodies to assist them in the list of the Law Societies, for the project.

At this point, Mr. Chitty for the second time raised the question of The Human Rights Committee, and wondered why it had not been allowed to remain part of the Civil Liberties Committee. He pointed out that a draft international covenant on Human Rights was under examination and a report would be made at Washington.

At this point the question of the Junior Bar was again raised and Mr. Jamieson and Mr. W. Gregory spoke to the question and pointed out that it might be dangerous to have the Junior Bar under a Constitution and By-Laws of its own as it would no doubt duplicate the work of the Senior organization and a resolution was submitted and passed that the interim report presented by B. R. Guss be referred back to the committee for further consideration and that a further report be presented to the annual meeting setting up the Junior Bar

as a section like other sections.

General Clarke and Andre Taschereau also participated in the discussion on the Junior Bar, and also opposed the setting up of a possible subsidiary organization.

B. R. Guss was the only member who spoke in favor of the Constitution for the Junior Bar.

The writer attended his first Bar Association annual at Ottawa in 1933 and has been actively interested in the work of the Association ever since. The mid-winter meeting at Saint John has not only advanced the work of the Association but has created a feeling of friendship amongst the Council members that will furnish a cohesive force that is bound to bring far-reaching results in the human relations phase of the Association.

In closing his opening remarks Mr. Carter struck the keynote of the meeting: "Now we have work to do—questions to discuss and to settle. I am sure we shall treat these matters with the despatch, the sound judgment and the good humour which invariably mark the proceedings of this Association."

WRIT OF PROHIBITION

Authority of Single Judge To Issue Order Nisi by Full Court—By Single Judge

The question has been asked, whether or not a single Judge of the Supreme Court can grant an order absolute for a writ of prohibition. It is of interest to note that Prohibition is a proceeding of which there are only a few reported cases in our Courts.

It is not questioned that the Court of Appeal can grant either an order nisi or an order absolute for a writ of prohibition. In Ex Parte Allen (1) an application was made before the full Supreme Court for a writ of Prohibition to restrain the Court of Common Pleas from certain actions. A rule nisi was granted and on its return the rule was made absolute. Similarly in Ex Parte Currie (2) an order nisi was granted by the Supreme Court returnable before themselves in a matter concerning expulsion proceedings from a church group.

In recent years it appears that there have been no reported cases on writs of Prohibition. However, the following cases seem to show that a single judge can only grant an order nisi returnable before the Court of Appeal.

Ex Parte Boyne (3) Weldon J granted a rule nisi returnable before the Full Court in a matter concerning election recounts under the Canada Temperance Act.

Ex Parte Baird (4) an order nisi was granted by Tuck J returnable before the Full Court in connection with the Dominion Election Act.

Comparing this practice with some of the other Provinces one learns that apparently in Nova Scotia only the Full Supreme Court can deal with a writ of Prohibition, as evidenced by the King-v-Giles (5), re Walter Johnson (6) and Trenholm-v-The King (7).

In Ontario it seems that a single judge can grant a writ or an order nisi returnable before himself. This may be deduced from Johnson-v-Johnson (8), Rex-v-Thompson (9) and Re Miles Transport Company Limited (10).

Manitoba and British Columbia also seem to allow a single judge to grant an order absolute for a writ of Prohibition. Nichols-v-Graham (11): McKee-v-Halveison (12) and Greavas-v-Almas (13).

1—2 Allen (NBR) 424. 2—26 NBR 403 (1886). 3—22 NBR 228 (1882). 4—29 NBR 162. 5—2 MPR 184. 6—4 MPR 446. 7—21 MPR 299. 8—7948 3 DLR 590. 9—1946 4 DLR 590. 10—1935 OWN 541 (also see 1943 OWN 67. 11—1937 3 DLR 795. 12—1938 2 DLR 201. 13—1936 2 DLR 191.

From Blackstone (14) one learns that Prohibition is a writ issuing properly only out of the Court of King's Bench being the King's prerogative writ, but for the furthering of Justice it may now be had in some cases out of the Court of Chancery, Common Pleas and Exchequer.

Worthington-v-Jefferies (15) and The Mayor of London-v-Cox (16) discuss the history of the writ in detail. From them one learns that: In reply to the 8th objection in Articuli Cleri of 3 Jac 1 it is stated, "Furthermore the Prohibition is quick and speedy for it is ordinarily granted out of court by any one of its judges in his chamber . . . ."

Lord Esher in The Recepta (17) informs the reader that "When the practice with regard to moving for prohibition in the old courts is brought to mind —viz—that you might move for prohibition in one court and if it was refused you might move for prohibition in another and so on . . . Under the old system there was no appeal."

It is suggested that the common law power of the old Court of King's Bench is now vested in the King's Bench Division of the New Brunswick Supreme Court, and a single judge may exercise that power.

However, ever stronger is the contention that a single Chancery Judge may issue a writ of Prohibition.

The Yearly Practice of the Supreme Court (18) states that judges of Chancery have the power to hear and determine applications for writs of Prohibition at common law and under the English County Courts Act.

In Iveson-v-Harris (193) it is shown that a single judge of the Chancery Court had the power to issue the writ of Prohibition. Under the present Judicature Act (20) a judge of the Chancery Division of the Supreme Court has all the powers as is now as may be hereafter given a single judge. If a single judge of Chancery or Equity had the jurisdiction it is suggested that he still has the jurisdiction to grant a writ of Prohibition.

At any rate there seems to be no directauthority stating whether a single judge may grant an order absolute or not and the present practice seems to be he may only grant an order nisi. It is respectfully submitted that the Legislature be approached to ensure by legislation that a single judge do have the power to grant an order absolute for a writ of Prohibition. 14—Lewis' Blackstone Vol. 3. 15—10 C. P. 379. 16—2 L. R. H. L. 239. 17—1893 P5 255. 18—1931 p. 1247. 19—1 Ves. Jr. 252. 20—R. S. N. B. Ch. 113 Sec. 3.