

"CANADA, HER LAW AND LAWYERS"

The HON. MR. JUSTICE WILLIAM
RENWICK RIDDELL,
of TORONTO (Kings Bench Div'n, H. C. J., Ont.)

In Response to the Toast at the

ANNUAL DINNER
OF THE
NEW YORK STATE BAR ASSOCIATION

ROCHESTER, N. Y., JANUARY 21, 1910

"CANADA, HER LAW AND LAWYERS"

Mr. President and gentlemen, I, a Canadian, would be destitute of all Canadian national feeling; I, a Judge and lawyer, would fail in professional pride if my heart did not as cordially respond to your reception as you have cordially received the name of my country, of my profession and of myself. (Applause.) One thing I wish to say in advance of all else, that while I am a stranger here in this city — *sub modo* — (for I can never be wholly a stranger when my friend Mr. Moot is beside me, and John G. Milburn, whom I never could call *Mr.* Milburn, is not far away), but stranger though I am, *sub modo*, I absolutely refuse to consider myself or to be considered a foreigner or an alien. (Applause.) And when I say that, I do not mean to refer to the fact that this great and sovereign State used to retain me as her counsel to represent her before Her Majesty's Courts in my native Province; although that is true, and I hope she found my services as valuable and useful to her as I found her service useful and valuable to me. (Laughter.) Neither do I refer to the fact that I am an honorary member of the Bar of two of the States of this Union; and so I come from Missouri. (Laughter.) When I came here you had got to "show me" (laughter), and you have done so — splendidly.

But I refer to something far more elemental, deeper and more far reaching. Any day after I close my Court in Osgoode Hall, at Toronto, I can take a train and go to the east, and by the morning be in another Canadian

city. Of course, as actors always go to the theatre when they have nothing else to do, so lawyers invariably look up a Court they can attend if they have a holiday. I am a Judge: but I trust I have not ceased to be a lawyer. As I told you this afternoon, these terms are not synonymous, because I know many a lawyer who is not a Judge and I have heard of Judges who are not lawyers. (Laughter.) There is indeed a well-known instance in our own province of a prominent member of the Bar, who when he received Her Majesty's patent appointing him a County Court Judge, at once proceeded to sell his library and buy a new gun. (Laughter.) Judge as I am, I have not been long enough on the Bench to forget the fact I am still a lawyer, therefore, I follow the lawyer's instinct, and look for a Court room.

I find a magnificent building surmounted by a flag which I have known from my infancy, the flag whose folds have guarded me through life. I come into the Court room and I see there a Judge garbed as myself (when I am in my official Costume); he has a black Queen-Anne-style coat, a silk gown, white hands; and he is addressed as "Your Lordship," or "My Lord," by members of the Bar. Some of these are King's Counsel; and there are others, too, separated by a bar, not the only bar that some practice at, it is said (laughter)—but at all events there is the same kind of bar as that which separates our Barristers. Everything looks exactly like my own Court in Osgoode Hall.

The Judge, too, has, like myself, received his mandate under the great seal of Canada. But wait a bit—the Judge begins to speak, and I look again at him. That is not the language I am accustomed to hear, it is a different tongue from that which I learned at my mother's

knee. The law he administers is strange, the doctrines are those I have not heard since I was at college, when I was a student of the civil law. As he goes on, I say to myself, "this is no my ain hoose."

But let me take the other direction; I go to the State of Michigan or I come to this State which is "good enough for me, little old New York," and I find a Court house there adorned by a flag, surmounted by a flag which is indeed not entirely strange to me, because I was born near a town to which many Aine éan visitors come; and our American friends never let us forget that the Stars and Stripes is *their* flag. (Laughter.) So much so, indeed, that when an American gentleman is asked to speak at a Canadian dinner, invariably and as a matter of course, the Stars and Stripes is floated in his honor. So I am familiar with the Stars and Stripes; and yet it is not my own flag, although the very next to it. Then I go into the Court room and I see a Judge without robes or bands, dressed not in Queen-Anne, but in late-Queen-Victoria-style, and who has not, like my brother in Montreal, received a patent from the Crown, but his mandate comes direct from the sovereign people to whom he is immediately responsible. Attorneys address the Judge, to my astonishment — never having seen an attorney address a Judge in Court — and indeed I could not hear an attorney no matter how loud he might call. And counsel have no distinction of silk gown and stuff gown, for they have no gown at all; and it is much if they do not wear a red four-in-hand instead of white tie and bands. This is all passing strange.

But stay — I hear the Judge speaking. I recognize the language, the intonation perhaps slightly different from mine, but no more different than that of Ottawa or of

Windsor; and the law he lays down is the same, the principles of law are those principles which I am in the habit of invoking in my Court in Osgoode Hall. I recognize his language, I recognize his terminology, I even recognize his Latin — the pronunciation of it. (Laughter.) Because if I hear Latin pronounced correctly and according to quantity, I may indeed be in the company of scholars, but I swear I am not in the company of common-law lawyers. (Laughter.) His dress is not the same as mine; but his law is the same as mine, his tongue is the same as mine; and peoples who speak the English language and follow the English common law cannot be foreign or alien to each other. (Applause.)

Now, you all know, I dare say, the old story of the Scotswoman who said to her friend: "It's nae wonner we lickit the French at Waterloo; oor men prayed." "But," said her friend, "d'ye no think the French prayed too?" "Nae doo't; but wha could unnerstan' them, jabberin' bodies?" I do not vouch for the theology; but there can be "nae doo't" that a community of language goes a long way toward bringing about a community of feeling.

Gentlemen of these great United States of America, I am come to you from the North Land, with greeting from our beautiful Lady of the Snows. I am come to address you, my American — neighbors? — friends? — cousins? — no, I have not yet the word — but American brothers. (Applause.) I come here with greeting from the land of the maple leaf, the land of the northern zone. Within a period which may be reckoned by the years of one generation, she has shaken off from her beautiful limbs those shackles which bound her progress so long; she has risen from that state of lethargy in which too long she had been sunk, and with her splendid face set, she has risen upward

and onward to her true place among the nations of the world. No unworthy sister, no sister to be contemned, but a sister worthy to stand beside her older and stronger and richer brother to the south. (Applause.) The Premier of the Dominion of Canada, the other day, said that Canadians apparently did not appreciate their country, for, in public speeches, they do not magnify their country enough. I must plead guilty to that charge — not of want of appreciation of her merits, but of failure to glorify them. If my friend, Mr. Mowat, from Toronto, were to address you, he would tell you about Canada, he would tell you about Nova Scotia, down by the sounding sea, with her hardy fisher-folk, her fruit, her stores of coal and of gold; of Prince Edward Island, the true New Scotland of this hemisphere, but with a soil and a climate denied to the old; New Brunswick, with forest and farm; Quebec, the ancient and stately, with her cities — Montreal, sitting at the head of navigation and at the receipt of custom, nestling under her historic mountain, the mart for half a Continent's produce, a competitor not to be despised even by New York. And old Quebec — sitting as she does upon her rock, looking out upon the magnificent St. Lawrence, her rocky plain where Wolfe and Montcalm contended and died — does not there sit so lost in contemplation of her own beauty and charm that she fails to hear at her gate the knock of trade, or omits to answer the call of insistent commerce.

My own Province of Ontario, with her magnificent vineyards and orchards, with her splendid farms and noble forests, with her gold and silver, copper, and nickel, and iron. Manitoba, whose wheat sets the standard for the world. And the two sisters of the plain, the latest progeny of our Dominion, with ear bent listening for the tramp of the coming millions, with arms spread wide open to all the

nations of the world, asking and calling for men to come to them, men who desire to win a fortune or a competency through honest toil. British Columbia, once described as a "Sea of Mountains," with her giant trees, with her fruitful valleys, with her harbors where the fleets of the world might securely and serenely ride. And that new Canada which is still a Territory — it is no longer the call of the wild luring the adventurous, but hard-headed merchant finds his reward in the cities of the Yukon. The seeker for gold is no longer the single pioneer, wielding the solitary pick and rocking the lonely cradle, but the millionaire is there exploiting her plains and her rivers. Surely we have a goodly heritage.

But I shall not boast; a Canadian never boasts (laughter), simply and solely because he needs not — he has but to tell the plain truth about his wondrous land.

We govern ourselves; we are the loving subjects of the King of England, and that not because he is the King of England, but because he is the King of the British Dominions beyond the Seas. Our King is an integral part of the Parliament at Ottawa, of the Legislature at Toronto, and of the other Parliaments. We pay no tribute, we govern ourselves, we call no man master. (Applause.) The difference between Canadians and Americans is this, we have a monarch who reigns but does not govern; you have a monarch who is not a king, and, therefore, does not reign, but he does govern. William Howard Taft has more power in the city of Rochester than King Edward has in the Dominion of Canada. (Applause.) Governor Hughes has more in any village in the State of New York than King Edward has in the whole Dominion of Canada; not only King Edward, but all his representatives. We govern ourselves and we propose to do it; and there is no intention on anybody's part, that I know of, to try to prevent it.

Our law is the English common law — the same as your law — except so far as it is modified by legislation in the same way as your legislation. But we are not troubled by constitutional limitations. If our Legislature wants to take a man's land it does it; and it is said it sometimes does. (Laughter.) If our Legislature wants to put a stop to combines, it does it; and that is all there is about it. It is a perfect marvel to a Canadian lawyer when he visits an American Bar Association, or an American Court, to hear argument after argument, when hour after hour is taken up on the question, "Is this constitutional?" "Is that constitutional?" or "Is the other constitutional?" With us everything is constitutional so long as it comes within the list of subjects allotted to the Provincial Legislature or the Dominion Parliament, as the case may be. (Applause.) The other day a Judge (whom I should call learned, were it not myself) said in a judgment that the prohibition, "Thou shalt not steal," does not apply to the Provincial Legislature; and the Court of Appeal, while they did not use the same words, said, "We cannot reverse that judgment." (Laughter.)

Now, our Courts are very much like yours. We have the same troubles that you have in your Courts; I mean the lawyers have the same trouble with the Judges, and the Judges have the same trouble with the lawyers. (Laughter.) The Judges think the lawyers have not got their cases thoroughly prepared; the lawyers are perfectly sure the Judges do not understand a sound argument when they hear it. And then we have the same difficulty in making the general rule fit the particular case. We have the same difficulty in determining which set of witnesses is telling the truth, if either of them is telling the truth. We have the same difficulty in drawing a cor-

rect conclusion from the evidence of people who are not trying to tell the truth and of people who are, those who could tell the truth and won't and those—well, you know. (Laughter.) We have the same difficulty with labor and capital that you have—in fact, we have the same difficulties that you have from beginning to end—only we are not troubled with that bane, “constitutional limitations.”

Then, the Bar—what shall I say about the Bar? You see a specimen of it here in my friend, Mr. Mowat. I admit he is rather a favorable specimen of our Bar; but still you can to a certain extent judge of the rest of the Bar by him. The Bar is not the servant of the Court in our country; the Court does not even call to the Bar. Take my own Province as an illustration. Every five years every barrister in the Province of Ontario has a right to vote for thirty individual benchers. These, with certain benchers *ex officio*, *e. g.*, Attorney-General and ex-Attorneys-General, Ministers of Justice, present and past, retired Judges, etc., form “Convocation,” *i. e.*, a Senate. They fix the curriculum, the examinations; they appoint the examiners; they organize law schools; they appoint and pay the professors of the law; they examine and they call to the Bar—the Court does not. If any young man has passed all his examinations, they may call him, or they may refuse. The barristers are a corporate body under the name “Law Society of Upper Canada”—they govern themselves. They are, in short, a distinct body over which we Judges have absolutely no control. If a barrister desires to practice after he has received the degree of barrister-at-law at the hands of the Law Society of Upper Canada, he is introduced by a bencher to the Court. He is then sworn in before the

Court and signs the roll. Then he has a right to appear in Court. The Court cannot prevent a barrister, so called and sworn in, from addressing the Court; and the Court has no right and no power to allow anybody else to address the Court than one who has been called by the Law Society. The attorneys indeed are different, they are called by the Court; they are examined by the Law Society and certified as competent to the Court, but they are called by the Court and made officers of the Court.

All Judges must be members of the Bar of ten years' standing.

In the Province of Ontario, even if it be but a five-cent case, the litigant has a right to have the law in his case laid down by a Judge who has been ten years practising at the Bar of Ontario. (Applause.) We have no such thing in civil cases as "Justice of the Peace Law," which I understand is very much on a par with what Shakespeare calls "Crown's Quest Law." The other Bars are very much the same as ours; each Province has its own Law Society.

The barristers (attorneys or solicitors have no right of audience) are divided into King's Counsel and stuff gowmsmen; but the latter have practically all the rights that have the King's Counsel. I cannot tell you the difference between them and the King's Counsel, except that the King's Counsel wear a silk gown and the others one of stuff. The King's Counsel have no extra privileges except they sit in the front row in the Appellate Courts, and are therefore as a rule called upon earlier, so that they sometimes have their motions sooner heard.

Now, I do not know that I should say anything more about our law with the exception perhaps of that

of the Province of Quebec. There the common law is not the common law of England; it is not the common law of New York State, or the common law of any of your States, except perhaps Louisiana. It is the civil law, based upon the old Roman law, based upon the French law; and let no man despise that law, let no man sneer at French-Canadian law unless he is prepared to maintain and prove that Coke was a greater lawyer than Tribonian, and Lord Mansfield than Pothier. The Roman law, which was the law of the ancient Roman, and which, if ever there be a universal law, will be the basis of that universal law, which is the basis of the law of Scotland, the basis of the law of France, which is the basis of the law of Germany — let no man despise that law unless indeed he happens to be like us, a common-law lawyer. Then, of course, he has a right to consider that absurd which differs from his own common law, "the perfection of human reason."

Now, what about the future? For a long time it seemed as though Canada was likely to be an appanage (commercially) of this great nation; it was deemed otherwise by the gods — and afterward by the manufacturers who nowadays, I understand, are playing, in great part, the role of gods in tariff legislation. The old Elgin Treaty was denounced. Hard times set in in Canada. Our trade was disturbed. But Canada found new avenues of trade, her trade went east instead of south; and now, at last, we are able to stand upon our feet and we are no longer seeking any concessions from this nation. We did more than once suggest more liberal trade relations. I think we are still open for negotiations for freer trade; but that is entirely for you; we are not going to seek it. If you think it wise, then I haven't any doubt our people will

gladly listen; but we have made advances too often, we have been snubbed too often, and proud people as we are (the same breed as yourselves), we shall not risk another rebuff. (Applause.)

We have made mistakes; people who do not make mistakes do not make anything else; but no man and no nation has time to worry or brood over past errors. The present is all we have; and I vastly mistake the temper of my countrymen if they are not determined to make the most of this present. We desire to live in peace and harmony with all men. We will, if we can, live in peace and harmony as far as trade is concerned; if we have to fight, why "by jingo." I suppose we will have to fight. (Applause.)

There was for some time a feeling among no small part of our people, including perhaps some of our public men, that it was the ultimate destiny of Canada to form part of this great nation. That feeling, so far as outward expression is concerned, is dead. We have made our choice. We have determined to remain Canadians and to remain British. This choice is irrevocable; so far as I can see, unless all history is false and the future belie the past, Canada will remain Canadian and will remain British. Such is our will — and there is no real fear of external aggression. In so saying I, of course, assume and take for certain that this great nation which has shown the world an example of self-abnegation in the case of Cuba, will never try to force an unwilling people to join their destiny with hers. (Applause.) The people of the United States of America value the citizenship of the United States too highly to give it to a nation of slaves; and they will not force themselves upon a nation of freemen. (Applause.)

Until well within the present century, there was no thought of any force except possibly from the south; and during

one hundred years and more, thank God, there never has been trouble so acute, there never has been misunderstanding so great — and there have been troubles and misunderstandings — that it was necessary that brother should rise against brother, and children deriving from the same mighty loins should imbrue their hands in each other's blood. And to me such a tragedy in the future is simply unthinkable.

Within the present century, within the last few years, a fear has arisen that another nation might have designs upon Canada. Should that possibility become a dread reality, and Canadians be forced to take arms in hand and fight that Canada should remain Canadian and remain British, I have a sure and confident hope that Canadians in the twentieth century will not be behind those of the nineteenth. The land where died Wolfe and Montcalm and Brock has produced their like; and they will not be found wanting. But if the valor of Canadians should upon the ultimate test prove futile and before them should be nothing but to surrender or to die in the last ditch, I have also a sure and abiding faith that the people of this mighty nation would not stand idly by and see their brethren slaughtered, or subdued. (Applause.) I know not whether the Monroe Doctrine extends to Canada; but, my American brethren, I do know that deep in the hearts of the American people is engraven that older, that dearer and more far-reaching doctrine, "Thus speaketh the Lord of Hosts, shew mercy and compassion every man to his brother." (Applause.) And in that last terrible hour, it is impossible that Boston could see Halifax, New York could see Montreal, these great lake cities of this State could see Toronto, Chicago see Winnipeg and the cities of the west see Vancouver and Victoria

pass under a foreign flag, a flag belonging to a nation different in descent, different in laws, different in institutions, different in aspirations and different in that indefinable something that we call the genius of a nation. (Applause.) As the United States are not to have Canada, by the great God in Heaven no other nation on the face of the earth shall have her. (Applause.) We shall remain Canadian and we shall remain British.

Forty years ago or thereabouts, when trouble arose over the Alabama matter, when the crisis was acute and war was terribly near, General Grant, one of your great Presidents, said that the presence of the British flag on the North American continent was a constant source of irritation. No doubt at that time there was much truth in what was said; no inconsiderable part of the people of the United States was descended from a race who had for generations suffered injustice at the hands of those who identified themselves with that flag. We have heard to-night "The Wearing of the Green" (a voice, "A great song"), yes, my friend, a great song, and a song, my friend, of a great people; and now a song whose tune is played by the regimental band on the 17th of March, to every Irish regiment in the British Army; and the Queen of Great Britain and Ireland sends to every Irishman in every Irish regiment, a shamrock on the 17th of March.

I do not wonder that many of the Irish loathed the British flag for years; but that has gone by. The Irish people are now finding who are their true friends and who are their enemies. They know whom they have to thank for the oppression of their race. The Irishman is becoming reconciled—he knows that the Englishman, the Scotsman, the Welshman, is trying to atone for the long centuries of misrule from which the Emerald Isle

has suffered. All discontent will die out when the Irishman has become reconciled to British rule. And this is almost secured, because he knows that in a short time he will have that Home Rule which Canadians have for years been urging for Ireland — a Canadian Home Rule, a Home Rule by which the Irishman may govern himself, in all matters affecting Ireland. Let me not be misunderstood — no man is a greater Imperialist than I, or stands more strongly for the union of the British Empire, and so I think it would be a world calamity if Ireland should for any reason or by any means be severed from the Empire — but a Home Rule on the Canadian model is what ninety per cent. of Canadians desire for her. And there is no more loyal British subject than the Canadian Irishman. And so between these two nations, yours and mine, the floating of the Union Jack is no longer like shaking a red flag before a bull; and instead of Canada being now an open sore — a stumbling block in the way of peace and harmony between these two nations, her ensign stirring up and irritating part of your people who formerly hated everything British — she is become a bond of union, bringing you more closely together. And this will increase in the future — for British in sentiment, British in institutions, British in law, British in government, we are American commercially, American socially, we are a link between the two nations; and I look forward to the time when Canada will join even more firmly the hands of her kinsmen together in a clasp never to be broken, forming a union of kindred nations never to be separated. (Applause.)

Now, it may be that the dream of the prophet is not doomed to be fulfilled, it may be that never will twin

fleets sail forth together under the Union Jack and the Stars and Stripes with the one mandate: "There shall be no more war." Indeed and indeed, if such a time come, then there will be no more war. But it may be that this is not to be; it may be that there never will be a treaty of paper and ink between the two great English-speaking nations; but it is as certain as the immutable laws of morals, as certain as the track of the planets around the sun, as the stars in their courses, that these peoples of kindred origin, kindred tongue, kindred institutions, kindred aspirations, must be bound together by a tie which is infinitely stronger than a parchment bond, that they must stand and march and, if need be, fight side by side for truth and justice and righteousness among the nations.

So mote it be. (Applause.)