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American-Canadian Miscellany

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ington State Bar News, Vol. IX, p. 26, as was the report of the Unauthorized Practice Committee, Mr. E. F. Velikanje of Yakima. Mr. Joseph H. Gordon of Tacoma, delegate of the Washington State Bar Association to the American Bar Association, reported on the 78th Annual Meeting of the American Bar Association in Philadelphia. His report is printed in the Washington State Bar News, Vol. — p —.

A panel discussion on the subject "Breaking Legal Log Jams" was conducted under the chairmanship of the Hon. William J. Wilkins, Judge of the Superior Court of King County, the panel consisting of the Hon. John R. Callahan, Judge of the Superior Court, Cowlitz County, George Neff Stevens, Dean of the University of Washington Law School, and John N. Rupp of the Seattle Bar.

The Resolutions Committee, reporting through its chairman, Mr. Herbert Ringhoffer of Walla Walla, recommended the following solution which was unanimously adopted:

"BE IT RESOLVED by the Washington State Bar Association here assembled in Annual Meeting that we tender to the Yakima County Bar Association and its ladies our sincere thanks for the splendid manner in which we have been received and entertained and for the careful planning and execution of the many details which enter into the success of our sessions.

"BE IT FURTHER RESOLVED that we extend to the press and radio our acknowledgement of the excellent public service rendered in the coverage and reporting of the important features of our activities during this meeting."

AMERICAN-CANADIAN MISCELLANY

An address by the Hon. Mr. Justice C. Campbell McLaurin, Chief Justice of the Trial Division of the Supreme Court of Alberta.

Mr. Gavin, Distinguished Guests, Ladies and Gentlemen: It is indeed a pleasure for me to be in the State of Washington, a good country to which we Albertans are not strangers. You, John, in referring to me tonight as a Chief Justice and indicating that it is a position of great distinction, remind me of the occasion when a Lord Chancellor of England way back about the time of Napoleon, who

was greatly impressed by the title he enjoyed was traveling in his coach on an English road when he saw an institution with which he was not familiar. He asked his coachman what it was, and the coachman replied, "My lord, that is an insane alylum." The Lord Chancellor said, "My good man, stop the coach, I just remembered that one of my prerogatives is visiting institutions of that kind." The coach stopped at the gate, and the guard said, "You can't come in here." The Lord Chancellor replied, "Why can't I go in, my good man, don't you know I am the Lord Chancellor?" The guard said, "You don't understand, we have three of them in here already." So if you would just accept me without rank or station, as plain Campbell McLaurin I will feel much easier and happier with you.

This is not a new experience with me—and in saying that I am not boasting—to be presented at a meeting of a State Bar Association. I think this is the tenth or eleventh American State Bar Association I have had the opportunity to visit. Not all of them have had to suffer a speech from me. But I wonder if at this point I might on behalf of myself and all the other guests in these last moments of this delightful three days express our appreciation to the Members of the Bar of Yakima County for their gracious hospitality in their homes, the perfect evening at the country club, looking over a verdant Valley and a delightful city and feeling as we looked across this, your location of action, that you carry out the highest traits of our profession in that "you strive mightily but eat and drink as friends".

I feel that it is exceedingly important that we Canadians and Americans meet with one another as frequently as possible. On my return to my home city I will tell the members of the bar how much they have to learn from our American cousins, the great American Bar Association, which is doing an unselfish job for the people of the nation and the active and vital work of your Bar Association.

The American Bar Association for some reason that I have never learned, in 1914 held their meeting in the City of Montreal, and although they were guests in my country they were gracious enough to invite Canadian Lawyers from all over Canada to attend their meeting. Out of that grew the Canadian Bar Association, and ever since 1914 the two Associations annually exchange visitors. Over the years Canadians have had the pleasure of visits from such distinguished Americans as Charles Evans Hughes, William Howard Taft, John W. Davis, and your own Frank Holman, and it does much to cement the

friendliness and understanding that must exist between our two democracies if hemispheric solidarity is to be maintained.

I thought it might be appropriate this evening if I made a few remarks on juries, the Courts and the organized Bar of Canada because in some respects the Canadian picture is not entirely the same as yours.

I am heterodox enough to entertain the view that the jury system is largely outmoded. I say this notwithstanding such eminent statements as follows: In Brickwood Sackett Instructions,

No stricture of the jury will ever lead to its abolition and the return to the arbitrary decision of any judge no matter how famed his integrity and ability, whereby the litigant be again at the mercy of one removed from common sympathy of his fellow men by reason of his power, person or prominence.

Then in the late 18th Century Lord Camden thus expressed his enthusiasm for trial by jury:

Trial by jury is indeed the foundation of our free constitution, take that away and the whole fabric will soon moulder into dust.

On the other hand, as distinguished an American as Mr. Justice Holmes said:

A judge who has long sat at nisi prius ought gradually to acquire a fund of experience which enables him to represent the commonsense of the community in ordinary instances far better than an ordinary jury.

A still more modern expression of opinion is to be found in a recent English work "The Modern Approach to Criminal Law" wherein the author says:

The alternative to trial by jury is trial by judge alone. Judges are probably quite as prejudiced as laymen, but most judges have, by their training, learned to suppress their prejudices. . . . It is the opinion of some minorities today that a judge alone is a better tribunal for the protection of human rights than a jury.

If you will bear with me for a moment, I would like to relate our experience in Canada but before doing so permit me to make an historical comment about the jury. The original jury which developed at common law, was not a jury in the modern sense whatever. It was a group in the community who were witnesses, who might even know something of the alleged offence, and who could come forward to testify as to the character and reputation of the accused. Over centuries it developed into a judicial body which was the sole judge of

the facts and for a period of many years was, in truth, a bulwark against the tyranny of the Crown and of Crown appointed judges. At another stage in English history it was a preserver of individual liberty with respect to political offences and later a protector of humanity when hideous punishments were meted out for trivial offences. In all common law countries, at least emotionally, the jury system is deeply embedded in our law and any attack on it is immediately regarded as an assault on the very foundation of our institutions. Nevertheless, I have the temerity to suggest that in the civil field particularly the jury is becoming less and less an effective instrument in the administration of justice.

Have you heard of the English jury which was having much difficulty in arriving at a verdict? The judge summoned them from their retiring room and addressing the foreman inquired if they would like lunches sent in whilst they proceeded with their deliberations. "Yes," said the foreman, "please send in eleven lunches and one bale of hay for a jackass."

Notwithstanding eloquent tributes still paid to the jury system, and erroneously ascribing its origin to the Magna Charta, it is falling apart from bare public apathy. The competent members of society for the most part almost abhor the necessity of serving on a jury and your best citizens will, with relief, tell you how they have successfully managed to emancipate themselves from the necessity of serving.

Having said this much, I would like to be factual. In making some Canadian references do not conclude that I am boastful for if we enjoy any advantages, they were certainly not due to the efforts of myself or any of my colleagues. I would first like to talk about my own Province. Alberta is large geographically, almost a Canadian Texas. It has a population of one million people. Our judges, of every category, are appointed by the Federal Government for life. In the last 20 years or more in Alberta we have not averaged more than one civil jury trial a year. The reason for that is threefold: The profession and the public appreciate the dispatch that attends trial by judge alone; there have been recurring sorry experiences in tort cases where a jury has awarded inadequate damages; and finally the party seeking the jury must put up the cost thereof in advance.

In the criminal field our juries comprise six instead of twelve, which is accounted for by the days when sparse population made it most inconvenient to assemble the conventional jury of twelve. Then in some way there grew up the rule in Alberta—and it is the only Prov-

ince in Canada that has it—that an accused person in a Criminal case could elect for trial by judge alone. He is of right entitled to a jury.

I gathered some illustrative statistics for the year 1952. The City of Calgary serves a judicial area of 250,000. In the year 1952 there were 57 criminal causes in the Superior Court; 53 of them were tried by judge alone, solely on the election of the accused. The Crown would have borne the expense of a jury, the rule of paying for one only applies in the civil field. In the Edmonton judicial area, comprising 300,000 people, there were 92 causes, all but 12 of which were tried by a judge alone. The same pattern has continued up to the present.

In the year 1954, in the Edmonton district, there being no murder trials which are invariably tried by a judge and jury, every single criminal cause was disposed of by a judge sitting alone.

In anticipation of these remarks I have discussed the matter with a number of my colleagues at the Bar, who frequently appear in criminal causes. Without hesitation they assured me that in their experience judges had a better appreciation of reasonable doubt than juries, and there really had to be an unusual circumstance where they felt safe in advising the client to elect for trial by jury.

Let me supplement the Alberta picture by some general statistics. In the year 1950 most of the Provinces in Canada had very few civil jury trials, on the average two or three a year. In the populous Province of Ontario the trend is reversed. In the City of Toronto in that year 98 civil causes were tried with a jury. But the most significant statistics are from England. In the year 1950 there were only 39 civil causes tried by a jury. In short, forty million living in the country that created the jury system have almost abandoned it in civil matters.

A judge on this continent is just a lawyer in another role. Almost every day the competent lawyer is exercising judicial functions in controlling the impulsive, the grasping or the unreasonable client, telling him in advance what the legal result would be. His task would be impossible through the minds of twelve jurymen. Is it not equally difficult to achieve equitable, honest judicial results in a Court of law through the minds of twelve laymen without legal training?

I was requested to say something about our Courts. I cannot make it a comparative effort because I am not equipped to do so. Accordingly, I will leave it to you to make the comparisons from your own intimate acquaintance with Washington and other States.

All judges in Canada, regardless of the Court, are appointed by

the Federal Government for life, to hold office during good behaviour. We would have no other system. But this is no reflection on your many excellent Courts operating on an elective basis. Each Province has the judiciary divided into two divisions, the County Courts with limited jurisdiction, and the Superior Courts. The judges exercise jurisdiction only in the Province of their appointment, so in that respect differ from your federal district judges. The Superior Court judges in each Province are divided into two groups, the trial judges, and the appellate judges. Then over and above the Provincial Courts is the Supreme Court of Canada, comparable in practically every respect to the Supreme Court of the United States. The County Courts deal with probate, some criminal causes and civil causes with a monetary limitation, in Alberta of \$1000. The rest of the field, except for claims against the Crown handled by a special Court similar to your Court of Claims, is occupied by the Superior Courts, handling all criminal causes and all civil litigation whether involving Provincial or Federal statutes. From the trial judge there is an appeal to the Provincial Appellate Tribunal and further appeal to the Supreme Court of Canada. Now specific remarks respecting my own Province may be in point. The County Court comprises eleven judges, each paid in all \$13,000 a year. The Superior Court, the Supreme Court of Alberta, comprises eleven judges divided into a trial division of six and an appellate division of five, each paid \$17,000, with additional remuneration to the Chief Justice. Favourable pension provisions are provided, including allowance for judges' widows.

I was requested to make a few remarks respecting our Provincial legal bodies. I am acquainted with the efforts of the American Bar Association in sponsoring integrated Bars in the various States, and would conclude that in all our Provinces we possess the integrated Bar in almost a perfect form. On this subject, for the sake of brevity, I will take the legal profession in Alberta as an example.

Our lawyers are governed by the Legal Professions Act, which delegates to them full control of the profession. The Act constitutes the Law Society of Alberta, comprising all lawyers entitled to practice. They elect by democratic ballot, an executive called Benchers to administer the affairs of the Society. The Society itself determines the standards of admission and the fees to be paid thereto, and has a large investment in libraries and owns other substantial assets. For all practical purposes it has absolute disciplinary powers over its members, and the moment a complaint is made against a member of the

profession, an initial inquiry is made by the Chairman of the discipline committee to determine whether there is a prima facie case of conduct unbecoming a member of the Bar. Groundless complaints are readily disposed of without embarrassment to the respectable lawyer, but when the complaints have merit, three members sit in judgment on the member against whom the offences are alleged. By this method there is a continuous control over every member of the profession.

In my early days at the Bar, thefts of clients' funds by lawyers occurred all too frequently, giving rise to popular demand that lawyers be bonded, which is pretty impractical, and, in any event, prohibitively expensive. Popular demand became so insistent that in 1937 the Law Society of Alberta adopted a scheme which had its origin in New Zealand, and set up an assurance fund for which an annual assessment is made. In the intervening years, the assessment has been modest, but there is now something in the neighbourhood of \$100,000 in the fund. Since the establishment of the fund there has not been a single client in the Province who has lost any money through his professional dealings with a lawyer. Lawyers found guilty of defalcation, no matter how small the sum, are promptly disbarred and I cannot recall any case of reinstatement. To protect the fund all lawyers must operate trust accounts—failure to do so being an offence that makes them liable to disbarment—and such accounts are open at any time to inspection by accountants and others of the Society's selection, without notice. The licensing of the profession has been suggested in Alberta, but the idea was promptly abandoned upon the Government being invited to devise any scheme which could provide the public the protection they now enjoy. The members of the Society pay annual dues of \$65.00. They are not entitled to practice failing payment of this amount, of which \$25.00 is allocated to the indemnity fund.

Ladies and Gentlemen, I could have extended quite considerably my remarks on the subjects to which I have adverted, but we have already had a full evening, and I will conclude by thanking you for giving me the privilege of visiting with you.
