*(September 1st, 1938)*

# Law and the Public

By Viscount Finlay of Nairn, K.B.E.

Lord Finlay:—Mr. President and gentlemen, it is my first duty and indeed a most pleasant one to thank you, Mr. President, for the more than kind way in which you have introduced me. I appreciate deeply your reference to my father who always took the keenest interest in Canada, who, as some of you know, appeared in Canadian cases—I suppose in more Canadian cases than any other one man has ever appeared before the Privy Council and who up to the end of his life always referred with peculiar interest and satisfaction to the visit to Canada which he paid in 1919.

In the far too kind things Mr. President which you said about me there was one word and only one with which I was inclined to quarrel. You were kind enough to refer to me as a jurist, and that reminded me of a famous observation of a very great and also very witty English judge who said a jurist was a person who knew a little about the laws of every country except his own. I am quite sure in the kind things you said about me there was no reference to that observation.

Now gentlemen, I have arrived at Toronto having travelled hastily—that was inevitable—but having travelled through Canada. I arrived at Quebec where one ought to arrive because the history of Canada, while it does not quite begin in Quebec, but the early history of Canada is to a great extent centered in Quebec. I travelled right through Canada to British Columbia where I attended the meeting of the Bar Association in Vancouver. I saw the Rockies; I saw the prairies. I was privileged through the kindness of Mr. R. B. Bennett, with whom I twice I think appeared at the Privy Council in cases, to see a ranch near Calgary. I spent a night in Winnipeg and here I am in Toronto. I



have no intention whatever of attempting to expound to you any views about Canada. One of the wisest men I have ever known once said in my hearing that nothing can be imagined more foolish than for a person who knows a very little about a subject to talk about it to those who know a great deal. That is exactly my position. I see before me innumerable people who know a great deal about Canada. I, though I have taken the keenest interest in my tour, know a very little and I should therefore, not be justified in taking up your time by observations on Canada. But let me just say this. I am a Scotsman, of Scottish parentage. I was born in London; educated in England and my life's work has lain in London. And it has been profoundly interesting to me, travelling through Canada, to see the great things which the English and the Scottish people have done in Canada. One fully recognizes and proudly recognizes the work of other nations. Nobody can have been even for the shortest time in Quebec without profoundly interested in the French civilization which one sees there with such affection and other nations might be mentioned. When I was at Winnipeg I was shown a large settlement on the land which I was told was almost entirely occupied by Ukranians and one called to mind the remark made by a very famous humorist that if Ukranians were left alone for a generation they would think they had won the battle of Trafalgar. That observation was, of course, a joke which masks a truth because it is a great quality I think that we can work with and to a considerable extent absorb other nations.

I stated a moment ago that I was a Scotsman and the Scotch are never afraid of a story against themselves. Some of you here I expect are of Scottish origin; many will remember a story which I always peculiarly enjoy; it is told by Charles Lamb in his Essays on Imperfect Sympathies; he was dealing not as favorable as I think that the Scotch deserve, with a quality of the Scotch, a certain literalness, and he illustrated with the story that he had recently been at a party at which a son of Burns the poet was expected to be present. Lamb happened to remark that he wished it had been the father upon which four Scotsman who were there jumped up simultaneously to say that was impossible because he was dead. I should just

like to add this to what I have been saying and it is the only observation that I intend to make about Canada. Appreciating as I do fully what has been done and what I doubt not will continue to be done by other people I do venture to express the hope that the great development which I am convinced lies before Canada will in the main be a development by British people.

I wish today to be very slightly autobiographical. I wanted to talk a little, not indeed about myself but about places in England where I was conducted. The subject is one of some interest for I have often thought that a good deal might be said on the things which operate on the English people arising from the singular beauty of many places of education in England. Their names—some of you I doubt not have seen them and their names will at once occur to you; Eaton, Winchester, Oxford, Cambridge are perhaps the greatest examples. I was conducted at Eaton. Some of you will remember the poem by Grey, the author of the Elegy, who was himself an Eatonian and who speaks of it as the place where grateful silence still adores her Henry's holy shame. The reference is of course to the fact that Eaton was founded by King Henry, and Grey in his poem, in lines the last two of which at least are familiar to everybody, speaking of the Eatonian and the difficulties which inevitably lie before boys of later life, he says this; Yet rather why should they know their fate; since sorrow never comes too late and happiness too quickly flies; thought would destroy their paradise; where ignorance is bliss tis folly to be wise. Eton with its chapel, its buildings, among the finest examples of Tudor buildings in England; its playing fields where it is said that the Duke of Wellington said on those fields the battle of Waterloo was won. And lastly its river. That river, the Thames, which must seem somewhat small and puny to you with your magnificent rivers, but which if account be taken of beauty and history as well as of size, may perhaps bear comparison with any river in the world, the river of which Denham, in incomparable lines wrote: Oh could I flow like thee and make thy stream my great example as it is my theme; though deep, yet clear, though gentle.



And then from Eton I went to Cambridge; I went to Trinity that great college, the college of Bacon and Newton. In the ante-chapel at Trinity there is an incomparable statue of Rubens by Sir Isaac Newton. He seems actually to be looking into infinity and below the statue are engraved the proud phrase from Lucretius; Qui genus humanum ingenio superavit. The ante-chapel can be seen from some of the windows in the adjoining college, St. John's College. In that College Wordsworth was an undergraduate and looking from his window and seeing the statue of Newton in the ante-chapel of Trinity wrote the famous lines in the prelude: The marvellous index of a mind forever voyaging through strange scenes of thought alone. No finer description I think has ever been written either in poetry or prose of the solitary thinker. I spent three years in rooms looking out on the famous banks. I saw every day that famous avenue of limes up which Tennyson passed when he went to look at the rooms in which Hallam had lived and who he memorialized—Up that long walk of limes I passed to see the room where late he dwelt. Then I returned to the Thames.

I went to the Middle Temple. I ate dinner in that incomparable hall which some of you know, that hall which has come down to us with absolutely undiminished beauty from the reign of Queen Elizabeth. That hall with its high table made out of oak given to the Inn by Queen Elizabeth herself from Windsor forest and a small table which is of perhaps of even higher interest because that small table was made from a plank of the Golden Hind which was given to the Middle Temple by Drake when he returned having completed his memorable voyage around the world. I came then to the Temple. I used to sit on Sundays in the Temple church, that incomparable church which as you probably know was built by the Knights Templars. The Knights Templars were suppressed and the lawyers succeeded. In the round church you see buried many crusaders and you see their effigies with their feet crossed showing they had actually sailed to the crusades. Now the Middle Temple and the Temple Church bring me to what is supposed to be the theme of this very desultory address. I have been so long about the introduction I can assure

you I will not be long on the subject of law. But law, you know, is a subject which interests every one of us. I have the privilege I know of addressing many men eminent in business and the connection between law and business and the importance of law to business is far too obvious for it to be necessary for me to stress it. I recollect the famous passage where he refers to laws and says that law is the interest of everybody from the greatest among us feeling its power and the very lowest among us being under its protection. That I think is a high ideal for lawyers and I am proud to believe that both in England and Canada the law deserves those noble words of Hooper.

England you know is a very old country and we have picturesque customs coming down from a remote past. The surrogate system which lies at the base of the legal system in England was founded by King Henry II and the high sheriff of each county whose duty it is to receive the judge when he arrived in the county is an official of very great antiquity indeed, almost as old as any officer who now exists in the world because the high sheriff of the counties in England can be traced back far before the Norman conquest, I think about two centuries. After the conquest he was also called in French the Viscount, but the office was the same and for a good many centuries we have restored the good old Anglo Saxon name of High Sheriff. The Old Bailey is the central criminal court. Many of you must have heard of it for it is historically famous, for London. From May to October it is the custom every day to strew the floor of the Old Bailey with sweet herbs and bouquets are presented to the judge who sits, to the Recorder, to the common sergeant, to the Lord Mayor if he is there, to the alderman of the day; there is always one on duty and several other officials. Now that, gentlemen, is regarded very naturally by most visitors as being merely a pretty custom. But it has rather a terrible origin. It arises out of this circumstances. Until quite modern times, times that I can yet recollect, the famous and rather terrible prison adjoined Old Bailey and the prisoners were brought from Newgate to the Old Bailey to be tried. There was a terrible outbreak of fever in Newgate. The prisoners were brought into the dock and the fever was such that it affected



the judge who was very gravely ill, the recorder and the Lord Mayor and quite a number of other people, and ever since that day it has been the practice to strew these herbs and present these flowers, the idea being they would act as an antidote to danger, which happily has long passed away.

Now I must say one word about our two supreme courts, the House of Lords and the Privy Council. The former as you know is the supreme court of appeal for England and Scotland. There the Lords who are sitting sit in a legislative chamber, a strikingly handsome room and there every peer technically has a right to sit, but in practice the judicial business is done by the Lord Chancellor and by the Lords of Appeal, judges of the highest eminence. But of higher interest is I think the Privy Council which deals with appeals from the Empire other than England and Scotland. Hardly anything can be imagined more interesting than a week spent in the Privy Council. There a Lord Chancellor whenever he presides; there you will see the Lords of Appeal and other distinguished judges and there you will see eminent judges from the Dominions, Sir Lyman Duff, the Chief Justice of Canada sits there as often as his arduous duties in Canada permit. Now there, if one could imagine a week spent there, one might hear an appeal from India, where local systems not ours are brought under review and religious customs remote indeed from any of which we know are often discussed. Appeals from New Zealand, from Australia, from the Crown Colonies all over the world. And last but not least from Canada. I do believe—I am not going to trespass on any controversial matter—but I do believe that in the Privy Council you have a great imperial link and I cannot refrain from expressing a hope, a personal hope but very strong and real, that that link of Empire will not be broken.

There is hardly anything more that I wish to say to you. I think perhaps I might just say this. I have had of course no recent opportunity of being in touch with England but I think that the spirit of England is high, as high as it has ever been. We all hope and we all believe that the critical day through which we are passing will pass and will result in a peaceful and I hope and believe an abiding colu-

tion, but I think that it is true to say that the English people are prepared to do their duty whatever that duty may be. I was in Manchester during the crisis arising out of the abdication and I was enormously impressed by the perfect calmness of the English people. There was not the slightest agitation. Everybody quite rightly went about their ordinary business. Everybody of course was interested. To everybody it was a shock. I never was more impressed than I was on that occasion by the calmness which I think is one of the great qualities of the English people and I am perfectly convinced gentlemen that you may rely upon it. You may rely on us and I am certain that we may rely on you and that neither our calmness nor our courage are going to fail us whatever difficulties may lie ahead.

In conclusion I am reminded of what happened the other day at the Canadian Bar Association. Mr. Vanderbilt, the very eminent representative of the American Bar at the Canadian Bar Association had prepared and indeed given to the press a speech in which there was some review of legal matters. When Mr. Vanderbilt arrived at the lunch at which this speech was to be delivered he completely abandoned his manuscript and instead told a long series of stories. His very delightful wife who was sitting alongside was heard to say to her neighbor in a voice of horror, "When is he going to get to his address." Well, any of you who have been expecting an address on local matters I am afraid must have felt that, but I have wished to talk to you about things which I thought conceivably might interest you and I can only hope I have not entirely failed in that object.

In conclusion I once more thank you and thank you most warmly for your kindness to me. I believe, and I am sure you agree, that a strong free independent bar and bench are absolutely essential to the preservation of liberty in our country. We have that in England; I know you have it in Canada. Preserve it, for it is one of the most precious possessions. In conclusion then I would say this to you, I would beg you who are in the main of English and Scottish descent, beg you never to forget your mother country and to believe that by her you never will be forgotten.



PRESIDENT SMITH:—I will ask Sir William Mulock, one time Chief Justice of the Province of Ontario, to say a word.

SIR WILLIAM MULOCK:—Mr. Chairman, Viscount Finlay, gentlemen, just a word. Lord Finlay told us he was by birth a Scotsman. We do not think any the worse of him for that in Canada. There are others in this country who have played their part and well. All who come from the British Isles are most welcome, none more welcome than the guest of today. He has referred to some things in England that for a moment have taken my thoughts away from Canada and I have fancied myself again in beautiful England—England—dressed like a jewel from the bosom of the ocean, beautiful England. He has referred to many of its institutions, particularly the bar. There was never a moment in history when respect for law was more necessary than today. There are just two ways of governing people, by the rule of law or by force. That is the issue before the world today. Unfortunately some nations prefer mob law. The British believe in government by law and the great leader of that doctrine, precious as it is priceless, is the British Privy Council, and I share Lord Finlay's hope that that link of Empire will never be broken. Lord Finlay, no doubt at great inconvenience to himself has come a long distance from old England to the Pacific ocean to offer words of wisdom to the Canadian Bar Association here. And now returning home after having seen some of the beauties of Canada I hope that this, his first visit, will be but one of many more, and that he may take back pleasant reminiscences and feel that he has a second home in Canada. We have been honored by visits from distinguished citizens from the old land. We welcome them. They are helpful to us and the more who come here the more we will be pleased. I think I am expressing the view of everyone here today in thanking Lord Finlay for his most interesting, constructive and inspiring address and with your permission I will so express your views.

PRESIDENT SMITH:—Thank you Sir William.

Lord Finlay wishes to say a word but before he does I would like to thank him also on behalf of the Club for the

way in which he has expressed in eloquent, scholarly manner the atmosphere and tradition that surround the youth of Britain, which enables us to obtain to some extent the picture of how the youth and men of England develop so that in a crisis they always seem to coalesce into one unit.

LORD FINLAY:—I have no intention of saying anything else, I merely wanted to thank you and say that if anything could have added to my satisfaction at the kind way in which you received this vote of thanks that would be due to the fact that Sir William Mulock did me the honor to propose it. I was indeed profoundly gratified by what he was good enough to say and I thank you and I thank him most warmly.