

(September 12, 1934)

Reflections

BY THE RT. HON. LORD TOMLIN, OF ASH, P.C.

PRESIDENT WILFRED C. JAMES:—Your honor and gentlemen, I consider it a very great honor and very great pleasure to introduce to you our speaker of the day and also to welcome here as our guest His Honor the Lieutenant-Governor.

An American author of note has recently said that while the nobilities of the countries of continental Europe had lost practically all their former importance the peerage of Great Britain continued to hold their position in public life. This he attributes to the fact that this peerage is being constantly added to by His Majesty's grace from those who are not of so-called noble birth. No better illustration of the supreme value of this practice can be found than our speaker. A Commoner, educated at Harrow and Oxford, he was called to the English bar at Middle Temple and Lincoln's Inn. He distinguished himself in the practice of law and was in 1923 elevated to the bench of the High Court and knighted. Then in 1929 he was promoted to the position of Justice of Appeal in Ordinary and became a member of the Privy Council. He has since that time been a member of the Judicial Committee of the Privy Council and taken an active part in the determination of questions affecting not only Canada, but other parts of the British Commonwealth of Nations. In a year or two he was created a life peer and it is the fervent wish of those who recognize service that he may long continue to grace the bench, the committee, and the House. I have the honor and pleasure to introduce to you My Lord Tomlin of Ash.

LORD TOMLIN:—Your Honor, Mr. Chairman and

gentlemen, since I left London on the 28th of July last, I suppose I have travelled some nine thousand miles and as far as my recollection serves me, I have made somewhere about nine thousand speeches. At any rate you will probably not be surprised if I tell you that the imagination on which I rely for my facts is worn rather thin, and the memory on which I rely for my wit is completely exhausted. But even if this great Dominion puts a severe strain upon the voice and the vocal organs of its visitors, there is more than full compensation in the warm-hearted welcome and the kindly hospitality which they always receive. But when invited to address a Canadian Club the serious question always arises, what in the world am I to talk to them about. I am a judge and as a judge, both in my own country and elsewhere I am precluded from touching upon political questions. And in these days what subject is there that does not impinge upon politics? At any rate there are some subjects which in the old days were regarded as serious matters which today would be admittedly political subjects. For example if I were an economist prepared to tell you fairy tales about gold or paper, I should certainly be impinging upon politics. If on the other hand I were a soldier or sailor, I might tell you of campaigns or voyages, but I am quite sure you would not thank me if I told you about law suits, which is the only form of campaign I have anything to do with. If I were a scientist I might tell you something about discoveries, new discoveries, in the universe, but again, so far as I am concerned, the only discovery, if it be a discovery at all, that I have succeeded in making is the discovery of the fallibility of human testimony. Well, happily for me and perhaps unhappily for you, I have discovered that one of the objectives of the Canadian Club is the encouragement of the study of history, and that seems to open up a field of considerable width in which one may perhaps go for a gallop without knocking up against any of these political fences.

You have been recently in this city celebrating the Centennial of your city and also you have had a celebration here in Canada of the courageous acts and sacrifices of the

United Empire Loyalists, and that rather suggests to me some consideration upon what is the effect of anything in the nature of a historical background. Now the depth of your historical background here in Ontario, I suppose, may be fairly measured by those events which you have been recently celebrating. Not so deep as the historical background of the Province of Quebec; still less deep than the historical background of the Old Country.

Unless the mind is specifically directed to it, I doubt whether it is appreciated how much the historical background enters into the composition of ourselves, and by ourselves in England, I mean professional and business men like yourselves here; how much it enters into our position having regard to the contact we have with it in some form or other at almost every stage of our career. We start very often with a school of ancient foundation, with great standards and great traditions. I do not mean necessarily the famous public schools, like Harrow, Eton or Winchester—I mean there are lesser schools. And when you leave school you get next perhaps to a university, Oxford or Cambridge, which roots down to the middle ages. Some of you have no doubt been at one or the other, and I think you will agree with me that there must be a streak either of stupidity or perversity in the minds of any man who does not react favorably to the history and beauty, and tradition of those places.

Then a business man may become a member of one of the great livery companies of the City of London, some of them, I think, with a history dating back to the twelfth century and with a long record of educational and charitable work. If he happens to become a member of the Skinners' Company or Merchant Tailors' Company, he will perhaps, or certainly, learn this tale, how, many hundreds of years ago, there was a quarrel between the Skinners' Company and the Merchant Tailors' as to their respective precedence in the City of London. So bitter did it become that I believe the liverymen came to blows in the streets seeking precedence in some of the processions and functions which took place at that time in the city. This grave dispute was referred to the Lord Mayor of the day

for arbitrament. He proved a veritable Solomon. He awarded that each should have precedence over the other in alternate years. And moreover—and this is the really striking feature of the award—that in every year each company should give a dinner to the other. Well, that is a story which, as the late Lord Summer once said, is calculated to warm the cockles of a judge's heart.

Then, if you are a member of the bar, you have the Inns of Court. As you know there are four Inns of Court—Lincoln's, the Inner Temple, Middle Temple and Grey's Inn. Curiously enough no one of them is able to declare the date or manner of its birth. Nobody knows of their origin. For six or seven hundred years they have governed and disciplined and taught the profession, but how they came into existence nobody knows. But the better opinion seems to be today that it was in some such way as this. In the early days the advocates for the King's Court were provided by the church. Now the church did not regard the common law with great sympathy and they were anxious to introduce into the King's Court the law of the canonist and the civilizations. For various reasons they failed, and passed regulations which meant there ceased to be any advocates.

That happened in the time of Edward I. and Edward was not a gentleman with whom you could play tricks and he was not to be defeated by a measure of that kind and accordingly by order in council he constituted or authorized the judges to constitute a body of laymen with power to act as advocates in the King's Courts, and thereby laid the foundation of the modern bar. Now it is thought that the Inns of Court had their origin at that time, that they were founded in order to provide accommodation for these new advocates and instruction and accommodation for those students who were desirous of joining the order. At any rate, however that may be, by the middle of the Fourteenth Century the Inns of Court had become firmly established and were performing their functions of governing and instructing the profession in very much the same way as they are today.

My own Inn, Lincoln's Inn, has titular precedence of

the four. It is also fortunate in having a bencher in Toronto in the person of my friend Mr. Rowell. Its precedence is based mainly on the fact that our records at Lincoln's Inn go back unbroken to a date far earlier than that of any other Inn. We have our minute books which are called the Black Books, which contain the records of our proceedings from today right back to 1422 without a break. And in Lincoln's Inn we always drink the King's Health sitting down, and the origin of that is said to be this; that in the reign of Charles II. the King honored the Inn by dining one night with the benchers and when the time came for drinking the King's health the King, with that royal insight common to all monarchs, perceived that there was some difficulty with some of the members of the company at that stage in the evening in standing upright, and accordingly graciously granted permission that the King's health could that evening, and in Lincoln's Inn for ever thereafter, be drunk sitting down.

But the historical background is not confined to our institutions educational, professional or commercial. It really extends to the whole country; and if I may for a moment strike a personal note, not because my person has anything to do with it, but because it illustrates what I am saying, may I refer you to some of my own history? I was born in the metropolitan city of Canterbury with its great Cathedral Church, containing many historical monuments, including the tomb of Edward the Black Prince and the site of the Martyrdom, the spot where Thomas Becket was murdered. I was christened in a church called St. Martin's. St. Martin's claims to be a church of Saxon foundation, the oldest in the Kingdom, and to have been founded by Queen Bertha, the first convert of St. Augustine, after he landed in Great Britain. I have a house down in Kent not far from Canterbury. Within a few miles of my house there is the great Roman camp of Richborough. You may remember that from the first occupation of Great Britain by the Romans in the early years of the Christian era, until their abandonment of the isles at the beginning of the fifth Century, Richborough remained their great port, and the base of all their operations in the

civilization of the islands. From its main gateway the Roman legions marched through the length of the land along the great Roman road, the Watling street, and I have stood on the paving stones which marked the beginning of that road in the main gateway of the camp and have held in my hand one of the silver ingots which were sent from Rome to pay the troops in that camp. Recently a great store of these ingots was discovered in the course of some excavations which were made in the camp. They were all flattened in hour-glass shape so they could be tied together in bundles around their waist for transit from Rome to Richborough.

Well, it is very difficult to suppose that these things surrounding one and entering into one's life at every stage cannot have some effect upon one's mind and outlook. Of course there are those no doubt who will say it has a very marked effect upon your mind and outlook. It crystallizes both and you are as a result just as good as a fossil. But I venture to think, that is an exaggeration. I venture to think that we are not so unfamiliar with the needs of the world as to be unable, as time demands, to make those changes which are so desirable. Indeed to me it seems that the frame of mind, induced by those surroundings of ours, is much more the frame of mind of a wise and prudent gardener, who will always prefer to train and prune the goodly trees that he has, rather than uproot and plant anew. I do not know whether the proof of the pudding is in the eating, but at any rate Great Britain and the great Dominions, who draw their strength from her, have certainly in recent years displayed some such quality of mind as that which I have suggested. I think, if you look over the last two or three years at home, you will say that we have not done so badly, and we have not done so badly without any of those radical uprootings and burnings and replantings which are so attractive in some quarters of the globe. Isn't it true of our own country at home, and also of you here and of the other Dominions which think as we do, that their stability today is the notable feature in the world, and that any impartial mind looking out over and beyond the frontiers of the British allegiance upon

the tossed waves of passion and indiscipline which cover a large part of the remainder of the earth's surface, would reach the conclusion that there is some quality in those territories which makes for stability and security. It may be partly the freedom of mind which I have suggested to you. It is undoubtedly also this; it is the rule of law. I may perhaps be forgiven for attributing importance to that but it is surely due in large measure to the freedom of mind, which recognizes as a great principle of the common law that everything and everybody is under the law. There is nobody above the law. There is nobody who can say, I am above the law. We are all within the law and subject to the law. And I would urge you to cherish that principle as one of your most valued possessions, tolerating no encroachment upon it. For by that principle beyond anything else in the day of history will the British name be remembered and judged.

PRESIDENT JAMES:—My Lord, may I express the most sincere thanks not only of this large audience but of the large audience on the air which extends not only from one end of the province to the other but beyond its borders. We appreciate greatly your presence here with us.