

(September 18th, 1936)

Links of the Law

BY LORD THANKERTON, P.C., K.C., LL.D., &c., &c.

COL. MESS:—My Lord and guests and members of the Canadian Club, some few weeks ago in Nova Scotia a very impressive ceremony took place when Acadia University conferred on our distinguished guest the degree of Doctor of Laws. On that occasion the Hon. Col. Ralston presented an address, which gave a picture of a career of achievement almost unequalled in its variety and measure of accomplishment. It would be impossible for me to attempt to take extracts from that address and give you even a brief glimpse of that career, but from Winchester School, through Cambridge, the House of Commons and Ministry of Munitions, as Solicitor General for Scotland, then Advocate General of Scotland, afterwards Procurator of the Church of Scotland Assembly, then Lord of Appeal in Ordinary and a member of the House of Lords, you can appreciate that I would need all the time placed at our disposal today to introduce our guest.

In these times of stress and war, when individuals and nations are prodigally making and breaking laws with complete disregard for law and order, it must be a comfort to us to welcome a representative of a country, famed for its reluctance to make laws and therefore to break them, and himself an administrator of that hereditary British justice. Once William Watson from Lancashire, and now still a Scot, Baron Thankerton of Thankerton.

LORD THANKERTON:—Mr. President, Your Honor, and gentlemen, I plead guilty to the charge of being still a Scot, and you may, therefore, imagine the pleasure that I received in starting my journey, too hurriedly, I am afraid, through this great Dominion, of setting foot in New Scotland. It was not the first time I have set foot in Nova Scotia because

as Mr. Howard Ferguson, my old friend, will be able to tell you, he himself held a reception in Nova Scotia, on the Castle Esplanade at Edinburgh, which was founded in the days when they were able to purchase the title of baron for a grant of land, and undertaking to settle so many settlers in Nova Scotia.

We have still a good few of these baronets in Nova Scotia. I doubt if any of their ancestors ever saw the real Nova Scotia. But, apart altogether from the fact that you have a considerable number of Scots and their descendants in this country, it was a link between my country and yours.

I was questioned very closely by the representative of a newspaper yesterday, as to why I did not come to this country before. Well, I am not going to spend time going into that again now. But I assure you I shall at the first opportunity I can get free. I have been more than rewarded.

I would like to say in a word what one experiences, what Lady Thankerton and I have experienced, in coming to Canada. The most prominent feeling one has, is a psychological one. It is the feeling of breadth, of freedom in spaces, that you have. Now the country a person lives in almost invariably reflects itself in character. I suppose that is why some of your countrymen are known as rugged Scots, but it is not always meant by way of a complimentary adjective. Well, I have passed through your country, seen every variety of land, every variety of climate, except extreme cold; I have seen snow and I have just passed on, wondering and pleased. But over and above that—I cannot say I was surprised at its existence—I have experienced the most wonderful friendliness and hospitality wherever I have gone. That makes one feel very much at home. After all, if we people of common blood, in many cases of common descent—we can at least all go back to Noah—and have the same language—if we cannot feel at home with each other, it is a poor outlook for this world, in its unhappy condition.

And I would like to utter thoughts aloud, as I think with you on what is the amelioration or ameliorative cure for the present doubtful condition in this world. I have read in the papers this last day or so of a great dispute going on as to whether democracy or dictatorship is the best principle. I myself would approach it from an entirely

different angle and one thing, that has struck me more than anything else since the war, is that the wise thing, in so far as it is possible, is to deal with nations, if we can, just in the same way as the individuals in a community used to be dealt with. After all, the evolution of a civilized community is an attempt, often successful, to evolve a system of law and order in that community. And that is done almost entirely by public opinion. You may call it democracy or not; dictatorship or anything in that form, we have known it in the old centuries, was usually an administration of might and not right. Since the war people have begun to see—I think not much before the war—that there is such a thing as a community of nations, and my apprehension is that the community of nations should become civilized in exactly the same way; that they should learn to obey the same ideas of law and order which will enable the property and the persons, or the individual nation, to become safe and protected by the public opinion which supports that law and order. I would venture to suggest that the League of Nations has that ideal at heart. But the trouble with the League of Nations is that it seems destined to remain too much an unrealized ideal.

I remember one of the wittiest remarks I have heard was made by a Scottish judge, who was, I am sure, a very great churchman, and he was bringing down a report to our General Assembly of the Church of Scotland of which I was then an official, about 1921, and incidentally he referred to the League of Nations and its resuscitation mainly at the instigation of President Wilson and how unfortunately, owing to the pressure possibly from his home country, President Wilson declined to take any further hand as a member of the League of Nations.

I think that was regrettable. It was just as if Noah, after he got all the animals into his ark, had declared the ark was unseaworthy and he was not going on board himself. Now in the case of a community that has become civilized, it is no use; you won't have a successful political unit, unless you have all the animals in the ark. And that is really what is required to make the League of Nations a success. As long as many of the animals are outside, we cannot have a successful League of Nations, cannot have

a community of nations which is going to give law and order among the nations.

But remember, and this I think is the one hopeful sign we have got among the nations—and that has become more clear than ever since the Statute of Westminster—the British Empire is the greatest community of nations the world has ever known and it follows that in so far as the British Empire is able to have a common theory of law and order in it and in so far as it can conform to it, in so far as that is a civilized community of nations, you have the best possible preventive against war, which is the one thing we all want to avoid. And when one comes into another great nation in our Commonwealth, as I have come to Canada, and find common thought, not only among my legal brethren, but among my other friends who are so good to me, a common thought that there must be common action, common support for some good doctrine that will prevent war, there we have the best possible preventive against war that can be presented.

But there will still remain the difficulty of the nations outside the British Empire. What is going to happen about them? Well, it doesn't do, perhaps, to talk directly about politically contentious issues but where anything concerning war, concerning constitutional questions or things which are vital to our very existence as a nation are concerned, I think a judge has as much right as anybody else to voice his opinions as long as he does so with sincere convictions.

Now gentlemen, a word on the evolution of our British Empire. The days were, quite right too, when the Old Country was known as "the mother country" and the colonies, as they were called, were her offspring. You do not grudge that stage; that is only part of the evolution of the individual nations of the Empire, and is now past. And from the effect of the upbringing, of the development, which, at any rate for the greater part, has been done by the colonies themselves in making themselves sovereign states, I think you cannot ever forget the tie of your origin. There is one tie which I think we have in common in this Empire and that is the Crown.

I am going to be greatly daring. I am a member of the Judicial Committee of the Privy Council and we there give

decisions from all parts of the Empire. It is the most constructive work one could have—one is learning and learning and learning, never done learning. There may be a question as to whether that tie should be continued or not. That is for the sovereign states within the Empire to decide for themselves but I do wish them to remember this: it is not either in theory or in practice the decision of the Committee of the Privy Council; the origin and meaning of that is that it is the right of any subject to appeal to the Sovereign himself and the decision in these cases is the decision of the Sovereign. It is true, perfectly true, that he acts on the advice of a statutory committee of his Privy Council. But the theory is: it is one of the ties of the Crown. I have no views that the Privy Council should be enlarged, so as to represent more fully all the sovereign units of the Empire. It does, you know, contain members from every part of the Empire. We had your Chief Justice of the Dominion sitting with us in the Privy Council this summer; the Chief Justice from New Zealand. We have had the Chief Justice from Australia and we have had others representative of every Dominion who are members of the Judicial Committee. The only trouble is they are not always able to come and sit with us on the Privy Council. Well, that is not in a sense the fault of those who so composed the committee. I think this is a rallying point around the Crown. There may be certain kinds of appeals that it is hard and harsh to expect the parties to come overseas on, but I think there will always remain important and vitally constitutional questions which might perhaps be better decided by such an appeal. But we do not want people to think we want to butt in on any views of any of the Dominions. I am glad of this opportunity of expressing the angle at which I look at it and I hope the people will fully realize exactly what the implications of that form of appeal are. And I regard it personally as one of the most valuable ties of the Crown with the whole of the British Empire.

Now, gentlemen, Canada is a great long narrow strip, so far as population and trade goes. I have seen it now from end to end. I was in Victoria for a day; I was in Vancouver. It has the looks of a very great seaport. It

is a city which reminded me in some ways of Cape Town. And yet it was different. It has an opening for seagoing traffic which is bound to become more and more valuable. You have got on your eastern end the finest river I have ever seen, the St. Lawrence. You have seaports situated on it, with accommodation for the biggest of vessels. You have a wonderful future before you. And I feel, therefore, that it will not only be pride in your own Dominion of Canada, but pride in the far-flung Empire, with our common interests, that will keep you busy getting over difficult troubles of law and prosperity and financial difficulties that every nation has experienced in recent years, and coming into the calm and prosperous waters that I hope lie ahead for all of us.

These are serious thoughts and one has been led to be serious, at least since the war and during the war. We have a new generation growing up now and to me at any rate that new generation is one of the most interesting subjects of our present day. What are they going to make of it. May I venture a word about this further event in evolution.

I have two sons at Cambridge since the war and I was up there pretty often. I have been at Cambridge University and the outlook of these fellows of these days is one of the most striking things I have seen since the war. I suspect and expect that your experience here is very much the same. These young fellows, the first thing they realize is they have to do something in this life and their great anxiety was to find something real to do, something practical. They had certain ambitions. They were desirous of getting going in something practical. They had a determination that they would not have war if they could possibly help it. They had a great suspicion that it was the older people who might let them in for war, and you find men at Oxford passing resolutions in the debating societies going so far as to say they would decline to take part in war. I think that really is psychological. It would not prove true in effect if trouble really came. Because I believe that those young fellows have at heart just as much a love for their country, just as much realization that you must stand or fall together, and that if war came they would not be wanting. Because I profoundly believe that our great Empire at any rate will

not ever be found going to war unnecessarily. And I think that is only stating facts at this time of European flux and difficulty.

Now, gentlemen, my thoughts have been rather solemn. But how can they be otherwise? It is a practical world. If I have done too much lecturing you must forgive me, for everyone has his plaintive moments, but just at this moment when I stand on the soil of Canada, I cannot help feeling that I have seen with my own eyes another unit in a great bond, which will prove for certain a good help and foundation for avoiding international trouble.

I have, I think, perhaps spoken long enough on the subject but I do hope and trust we shall find that the days of dictatorships—I am certain that we will never have one in Great Britain or in this country; I don't think it is possible with the individual political responsibility which our people have. I hope that the days of the dictator will disappear and we shall find that it is in friendly competition and rivalry for trade that the world will find its panacea for the present unrest. I thank you.

COL. MESS:—My Lord, before coming here today I was rather puzzled as to how with your past career you could equalize the triangle of law and politics. Apparently your solution is humanitarianism. We wish to thank you very much for coming here. Your stay in Canada is all too short, but we wish you a happy voyage back home. Thank you.