Book of Remembrance
Annapolis Royal
1921

Outside the Ramparts of Fort Anne

The Book of Remembrance of the Historical Association of Annapolis Royal

A.D. 1921

EDITED BY THE PRESIDENT

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PRICE $2.50, (Post Free) OF THE ASSOCIATION

OFFICERS

of the

Historical Association of Annapolis Royal

Nova Scotia

1921

Honorary President

THE HONOURABLE ROBERT E. HARRIS

Chief Justice of Nova Scotia

President

L. M. FORTIER, Esquire

Vice President

F. C. WHITMAN, Esquire

Secretary-Treasurer

H. J. ARMSTRONG, Esquire

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PREFATORY NOTE.

BY THE EDITOR.

IT is felt that the Historical Association of Annapolis Royal will not have done its full duty until the more important things resulting from its activities in the year 1921 are recorded in some permanent form.

The incorporation of the Association by Act of the Legislature, a successful petition for the revived use of the ancient Arms of Nova Scotia, the erection of no less than five memorial tablets, and, above all, the celebration which took place in old Fort Anne on the last day of August, make the year a notable one and are events which merit a place in a special book of remembrance. Hence this volume.

The Act of Incorporation is first set out at length and speaks for itself. The other matters above enumerated follow in order, with such explanations as the circumstances require; a few illustrations are added, and an attempt made to supply a reasonably full index.

The book is issued in a dress which we trust will meet with general approval, and the hope is entertained that it will find a sale sufficient at least to defray the cost of publication.

The issue is limited to three hundred copies, this being No. 22

Annapolis Royal,
October, 1921.

ACT OF INCORPORATION BY THE LEGISLATURE OF NOVA SCOTIA.

11-12 Geo. V. Chapter 169.

AN ACT TO INCORPORATE THE HISTORICAL ASSOCIATION OF ANNAPOLIS ROYAL.

Be it enacted by the Governor, Council and Assembly, as follows:

1. Loftus Morton Fortier, Francis Cutler Whitman and Harris James Armstrong, and their associates, members of the Historical Association of Annapolis Royal, and such other persons as shall become members of such Association, according to the rules and by-laws thereof, are hereby created a body corporate by the name of The Historical Association of Annapolis Royal.

2. The said corporation may have a common seal; may act as Trustee and Administrator of historic property, real and personal, and may purchase, receive, hold and enjoy real estate not exceeding twenty thousand dollars in value, and sell, mortgage, lease, or otherwise dispose of the same for the benefit of the corporation.

3. Upon the passing of this Act the property of the said Historical Association of Annapolis Royal, whether real or personal, and all debts due thereto, shall vest in The Historical Association of Annapolis Royal hereby incorporated.

4. The corporation shall have full power and authority from time to time to make, alter, amend or repeal such by-laws, rules and regulations as may be deemed necessary for the control and management of the corporation, as are not inconsistent with this Act or the laws of the Province, and such by-laws, rules and regulations, with any amendments or repeals when approved of by the Governor-in-Council shall have the force and effect of law.

5. No member of the corporation shall be liable for the debts or obligations of the corporation unless he shall have individually become liable therefor; and no member shall have power to assign or transfer any interest in the real or personal property of the corporation.

6. No real or personal property of the corporation shall be either purchased, leased, sold, conveyed, mortgaged or otherwise disposed of until authority therefor shall have been given by the passage of a resolution authorizing the same at a meeting of the corporation specially called for that purpose.

NOTE.—The Association is indebted to the Hon. O. T. Daniels, Attorney-General; his Deputy, Mr. Mathers, and to Mr. John Irvin, K.C., for much kindly help in drafting this Act and getting it through the Legislature.—(Ed.)

PETITION FOR THE REVIVED USE OF THE ANCIENT ARMS OF NOVA SCOTIA.

To His Honour,
The Lieutenant Governor in Council:

The petition of the Historical Association of Annapolis Royal humbly showeth,

That whereas the said Association is especially and very deeply interested in the celebration this year of the three hundredth anniversary of the Charter of New Scotland, and whereas the Association believes that a fitting and desirable feature of such celebration would be the restoration to common use of the Ancient Arms of Nova Scotia, concerning which a printed and illustrated statement is attached hereto;

And whereas it would appear from the letter of Sir James Balfour Paul, Lyon King of Arms, also submitted herewith, that the aforesaid ancient arms are still good, and ought to be used in preference to the later grant;

Therefore the Historical Association prays that the Government of the Province do make it known by announcement on the occasion of the celebration of the three hundredth anniversary aforesaid, and as a part and feature of such celebration, that the Ancient Arms of Nova Scotia are, from that date onward, restored to use and recognized as the Arms of this Province.

And your petitioners will ever pray.

(Signed), L. M. Fortier,
President.

Francis C. Whitman,
Vice-President.

H. J. Armstrong,
Secretary-Treasurer.

On behalf of and by direction of the Historical Association of Annapolis Royal in meeting assembled, this first day of March, 1921.

THE ANCIENT, AND CORRECT, SHIELD OF NOVA SCOTIA, THE USE OF WHICH IS NOW REVIVED.

ARMS GRANTED AT CONFEDERATION

The petition was supported by the following letter from Sir James Balfour Paul, Lyon King of Arms, the highest authority on the matter in question:

SIR JAMES BALFOUR PAUL,
C.V.O., LL.D.

Court of the Lord Lyon.
H. M. Register House.

(ARMS.)

Edinburgh, 7 February, 1921.

LYON KING OF ARMS.

DEAR SIR:

I am sorry to have been unable to reply to your letter of the 6th ult. sooner, but I have been laid up with a slight attack of influenza.

I do not know why the arms of Nova Scotia were not recorded in the Lyon Office Register till 1805-10, but I presume that, like a good many others they had been neglected to be recorded in 1672, at the commencement of the present Register, when Parliament ordered that all persons claiming right to arms should send the same in to the Lyon to be recorded in his books.

There was no want of official recognition of these arms long before 1672, as King Charles I. in 1629 authorized the Baronets to bear a badge consisting of the arms of the Province surmounted of an imperial crown and round the whole the motto *Fax Mentis Honestae Gloria.* All the descendants of these Nova Scotia Baronets who have succeeded to the title still bear this badge both on their shields and round their necks suspended from an orange tawny ribbon.

As regards the later grant, I cannot but think that this was merely a blunder on the part of some of the authorities—not necessarily the Heralds College—proceeding from ignorance of the facts of the case.

Nobody can have a right to two coats of arms, and I certainly think that a coat of nearly three hundred years old is to be preferred to one of yesterday.

Yours very truly,

(Signed), J. BALFOUR PAUL,
Lyon.

L. M. FORTIER, ESQ.,
Fort Anne,
Annapolis Royal,
Nova Scotia.

One difficulty that might have arisen was by a generally unnoticed coincidence cleared away by the adoption this year of a new Dominion Coat of Arms.

On the shield of Canada as it stood the arms granted to Nova Scotia at Confederation had a prominent place, and it would have been awkward to have this continue after the Province had abandoned the use of those arms in favour of the older grant. But now no such difficulty exists, and it is singular that it should disappear so opportunely!

That difficulty out of the way, and the press and public generally supporting us, we were not greatly surprised, but none the less gratified, to have our petition answered favourably by the Premier at the August celebration.

And so another interesting matter has been brought to a successful conclusion in 1921!

MARKING THE "LIGHTHOUSE LOT" GATEPOSTS.

In the course of the proceedings at the regular quarterly meeting of the Association held on the 10th of May, 1921, the President read the following memorandum:

"We have to-day had the satisfaction of placing upon the two gateposts of what is now called the 'lighthouse lot' in this town a pair of handsome bronze memorial tablets. This has been done without fuss or ceremony, and I fancy that the main cause of our satisfaction with the event is that it fulfils a very ardent wish of the late Judge Savary, tried friend and historian of Annapolis Royal, and first Honorary President of this Association.

"The 'lighthouse lot,' as we now call it, appears on the old military maps as 'Engineers' lot' and is scheduled with Fort Anne as part of the military property conveyed to Canada by the Imperial Government in 1884.

"The neat fence which now surrounds the lot was placed there largely through Judge Savary's efforts and it was part of the design, suggested by him, that there should be two large concrete gateposts, with space for a tablet on each of them.

"The Judge then took up the matter of inscriptions, and on the 3rd June, 1919, wrote our secretary as follows: 'I enclose copies of the (inscriptions) which Dr. Armitage, then President of the Nova Scotia Historical Society, and myself agreed upon as suitable for the gateposts of the lighthouse lot.'

"And now, scarcely two years later, it is our good fortune to give effect to Judge Savary's wishes, and to see placed in position a pair of tablets worthy of the occasion, and bearing the inscriptions he composed:—

(West Side.)
This lot is the site
of the
Old Government
House
Residence of the chief military officer.
Destroyed by Fire, 1833.

(East Side.)
The Birthplace
of
Sir Charles Darling
1809—1870
Who ably served the
Empire as Governor of
Important Colonies.

"I have not been able to find out much about the old 'Government House.'

"The Calnek-Savary History tells us that it was a building of three stories and that it was burnt in 1833, and was then an old building. I have no doubt that the record of its construction may be found somewhere, and I shall continue to search for it until it is found.

"There is an illustration in Haliburton's 'Nova Scotia,' published in 1829, which shows a portion of the old house in question, and gives us an idea of what it looked like . We are fortunate to have this, anyway.

"But the most noteworthy event we know of connected with the old house, the one commemorated by our second tablet, was the birth there, February 9th, 1809, of Sir Charles Henry Darling, and in this regard we have much information. The father of this distinguished child of Annapolis Royal was Henry Charles Darling, at the time of his son's birth residing in the government house as commanding officer of the garrison here, and later a Major General and Lieutenant-Governor of Tobago; his mother the eldest daughter of Charles Cameron, sometime governor of the Bahamas.

"The son of these parents, Charles Darling, did not fail to do them credit, and his birthplace credit, in his after career. He played about our streets as a child, got the rudiments of his education here, and in due time went to Sandhurst. His first military appointment was to the 57th regiment of foot, when scarcely 17, and while still a youth of 19 he was made assistant private secretary to his uncle, Lieutenant-General Ralph Darling, then governor of New South Wales, and three years later became his military secretary. Next we find him military secretary to Sir Lionel Smith in the West Indies and Jamaica. He retired from the army in 1841, and held Secretarial posts between that date and 1849, when he became Lieutenant-Governor of St. Lucia, and in 1851 of Cape Colony, earning commendation in all these offices. He was administrator of the government of the Cape when parliamentary government was established there. We next find him entrusted with the task of inaugurating 'responsible government' in Newfoundland, and governor and commander-in-chief of that colony, our near neighbour; and having done his work there he was, in February, 1857, appointed captain-general and governor-in-chief of Jamaica, then including Honduras and the Bay Islands.

"In 1862 he was make a K.C.B., in recognition of 'his long and effective public services.'

"In September, 1863, Sir Charles was appointed governor and commander-in-chief of Victoria, but here his hitherto successful career received a check. He somehow did not hit it off with the Victorians he found in power. A deadlock came about which resulted in his recall after a troublous two and a half years' administration, but the feeling in the colony was not all onesided, for on Darling's departure a deputation of ten thousand sympathizers waited on him at the place of embarkation, and the legislative assembly voted him a sum of £20,000, which action, however, was turned down by the council. The assembly then voted the same sum to Lady Darling, but the measure was again rejected. But four years later, when the government of Victoria received tidings of the death in England of Sir Charles Darling they voted the sum of £20,000 to his widow—thus at length doing some measure of justice to his memory.

"Therefore I think that viewing his life as a whole Annapolis Royal has every reason to feel proud of this one of her distinguished sons, and that it is right to say of him, as is said in the inscription on our memorial tablet, that he 'ably served the Empire

as governor of important colonies.' And long may this small tribute to his memory, conceived by the late Judge Savary, and carried into effect to-day by the Historical Association of Annapolis Royal, endure, and speak of him to this and succeeding generations."

The Great Celebration

AUGUST 31—SEPTEMBER 1, 1921.

THIS event had its origin in a suggestion made by Mr. Justice Chisholm, at a meeting of the Nova Scotia Historical Society in Halifax, December 6th, 1918.

Judge Chisholm pointed out that the two hundredth anniversary of the establishment and sitting of the first British Court of Judicature in Canada would occur in 1921, and that so important an event ought not to be overlooked by the Historical Societies. Out of that grew our celebration. It was soon noticed that two other important commemorations demanded attention this year in Annapolis Royal, and it was resolved to have them all on one date, with, however, a separate memorial of each.

The parent society and our Association collaborated in the matter, and at length, on Wednesday, August 31st, 1921, the three tablets depicted on the opposite page were unveiled and dedicated in old Fort Anne, with fitting ceremonies.

The proceedings began at 2.45 p.m. A large platform had been erected in the garrison square. On this, towards the back, were placed three large rustic easels, bearing the tablets, each covered with a special and distinctive flag, and having a flagstaff in rear of each easel, on which the flags were run up the moment they were removed from the tablets, the band at the same time playing appropriate airs.. First, "Auld Lang Syne," secondly (for the lawyers' tablet), "The Roast Beef of Old England" (in allusion to "Doctors' Commons"), and, thirdly, "O Canada."

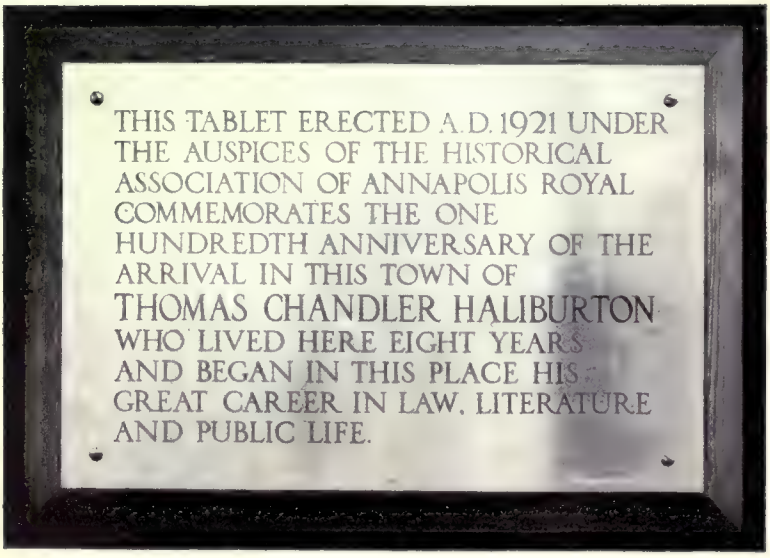
The act of unveiling each of the three tablets was performed by the Honourable MacCallum Grant, Lieutenant-Governor of Nova Scotia.

The Honourable Mr. Justice Chisholm was chairman, and in opening the proceedings, spoke as follows:

YOUR HONOUR, LADIES AND GENTLEMEN:

We are assembled this afternoon in this historic spot to commemorate three events of varying importance in the history of this


BY
THE BENCH AND BAR OF
A.D. 1921
ADMINISTERING ENGLISH
COMMON LAW WITHIN WHAT
IS NOW
CANADA


THIS TABLET ERECTED A.D. 1921 UNDER
THE AUSPICES OF THE HISTORICAL
ASSOCIATION OF ANNAPOLIS ROYAL
COMMEMORATES THE ONE
HUNDREDTH ANNIVERSARY OF THE
ARRIVAL IN THIS TOWN OF
THOMAS CHANDLER HALIBURTON
WHO LIVED HERE EIGHT YEARS
AND BEGAN IN THIS PLACE HIS
GREAT CAREER IN LAW, LITERATURE
AND PUBLIC LIFE.

The Chairman (Mr. Justice Chisholm) opening the Proceedings in the Fort

country and of this town. The first is one that took place in the reign of the first Stuart king of England, that monarch of whom Macaulay said that if his administration had been able and splendid it would have been fatal to his country, which country, according to the same classic authority, owes more to the king's weakness and meanness than it does to the wisdom and courage of much better sovereigns. Goldwin Smith says that King James I. often said wise things, if he seldom did them. To-day, we are not so much concerned with that king's character as we are with one of the acts of his public life, namely, the grant which he made in September, 1621, of all Nova Scotia to his friend, Sir William Alexander. That grant embraced a territory in North America almost as large as the kingdoms which King James himself governed with somewhat indifferent success. The grant covered what is now the Maritime Provinces of Canada and a portion of the Province of Quebec. If the grant was not followed by fruitful results in the way of colonization and settlement, it at least gave to our Province the name by which it has ever since been known. A tablet commemorating the event will be presented by the Premier, the Honourable G. H. Murray, on behalf of the Government of the Province of Nova Scotia, and it will be unveiled by His Honour the Lieutenant Governor.

The second event which we celebrate touches us more closely, for this event is the institution in this very fort two hundred years ago of the first court in what is now Canada, which was established to administer the great system of law under the protection of which peoples of the British races throughout the world have enjoyed so much of liberty, of security and of comfort—the Common Law of England. I need not say much about this event.

I must, however, before I pass away from it, read two messages which, I know, will be gratifying not merely to those who so successfully promoted this celebration, but to all the people who have the welfare of our country at heart. The highest law court in the British Empire is presided over by the Lord Chancellor of England, and the Lord Chancellor speaking for the august tribunal over which he presides and on behalf of the Bar of England, has sent this message by cable to felicitate and encourage those of us who are engaged in the work of applying the principles of the Common Law of England to the needs of the people of this country.

"London, Aug. 17th, 1921.

"MR. JUSTICE CHISHOLM,

Supreme Court of Nova Scotia, Halifax.

"The Lord Chancellor of Great Britain sends to the people of Nova Scotia and to the Nova Scotia Bench and Bar the warm congratulations of the Bench and Bar of England upon the completion of two centuries of the reign of the Common Law."

This is a gratifying message, coming as it does from so high a quarter. But the reign of the Common Law, as you know, is not restricted to countries which acknowledge the sovereignty of the British Crown. It prevails over the greater part of the United States of America, and the Supreme Court of the United States at Washington fills a place in the judicial system of the republic analogous to the place occupied in the British Empire by the House of Lords and the Judicial Committee of the Privy Council; it is the Court of final appeal in that great nation.

The Chief Justice of that Court, a former President of the United States, has sent the message which I now read:—

"Pointe-a-Pic, P.Q., Canada,
"August 5, 1921.

"MY DEAR JUSTICE CHISHOLM:

"I greatly regret that it is impossible for me to be present at the bicentenary of the establishment at Annapolis Royal of the first common law court in what is now the Dominion of Canada. This interesting event in initiating in the great Dominion the system of the English common law of course must attract the attention and grateful comment of all lawyers who have grown up under the same system, and who appreciate the principles of individual liberty and of liberty regulated by law, which constitute the essence of the common law. The great and wonderful power which the British Empire has exercised throughout the world has found one of its chief factors in the administration of justice which has been carried on by its representatives under the principles that have been derived from and perfected in the common law. Members of backward races who have had no confidence in their own courts have learned to respect the English administration of justice without fear or favor as a boon conferred on them by Great Britain. Of course in what are really dominions of English-speaking peoples the system is not conferred, but was transplanted with the sons of Great Britain. Two hundred years of justice under the common law in Nova Scotia and this Dominion has not shaken in the slightest the love of that system that generations of Englishmen cherish.

"With best wishes for the success of your celebration, and with grateful appreciation of the honour of the invitation, believe me,

"Sincerely yours,

"WM. H. TAFT.

"MR. JUSTICE CHISHOLM,
"Supreme Court of Nova Scotia, Halifax, N.S."

The tablet to commemorate the erection of our first court of common law will be presented by The Honourable Chief Justice Harris, Honourable Sir James Aikins, President of the Canadian Bar Association and Governor of the Province of Manitoba, and by Mr. W. J. O'Hearn, K.C., President of The Nova Scotia Barristers' Society. His Honour, the Lieutenant Governor will unveil the tablet.

The third event we are commemorating is one of more local interest. It is to mark the arrival a hundred years ago of Thomas Chandler Haliburton in this town, where he lived for a period of eight years. Haliburton's work in the legal profession and on the bench, his work in the public life of the Province and his achievements in literature are too well known to call for extended comment at this point. He is the best known of our native writers. Mr. Whitman, Vice-President of the Historical Association of Annapolis Royal, will present the tablet and His Honour, the Lieutenant Governor will unveil it.

The Mayor of Annapolis Royal, Mr. B. B. Hardwick, followed, saying that he felt it a great pleasure as well as a very great honour to welcome such distinguished men to Annapolis Royal, a town old in years but young in ambition. "My duty," he said, "is not to deal with the historical but rather in the name of our people, to tell you we are glad and honoured by your presence and to express the hope that you, one and all, will feel at home in our old town and that you will carry away with you pleasant recollections of Annapolis Royal and its people and its many natural beauties. I bid you welcome to Annapolis Royal."

The Honourable George H. Murray, Premier of Nova Scotia, then presented the first tablet for unveiling, speaking as follows:

YOUR HONOUR, MR. CHAIRMAN, LADIES AND GENTLEMEN:

I wish, on behalf of the Government of Nova Scotia, to thank your Lordship and members of the Nova Scotia Historical Society for their great interest in these proceedings. I want to thank you, Mr. Mayor, and through you, the Town Council and citizens gener-

ally of the Town of Annapolis for your kind co-operation in the interesting historical programme we are celebrating to-day. In my judgment the people of this Province are indebted to Mr. Fortier, one of your citizens, for the intelligent interest he has taken in this celebration.

I do feel, your Lordship, that Governments too frequently neglect proper recognition of historical events of great interest to the people, and I cannot but feel that I am justified in expressing the opinion that were it not for the deep interest the citizens of Annapolis Royal and the Nova Scotia Historical Society have taken in such events, we would probably not have this celebration to-day.

To all the agencies which contributed towards the organization and successful completion of this celebration, I want to convey the thanks of the Government of Nova Scotia.

This is an occasion which may be viewed only in the light of history. The event which we are met to celebrate marked the beginning of a great epoch in British and world history. We are just entering upon another epoch equally momentous. For us who are the heirs of British traditions, there need be no doubts, much less fears, of the issue.

The seeds of the British Commonwealth of Nations, first sown in 1621, have spread over the earth, and are to-day blessing and glorifying the world. Before three centuries more have rolled by, may we not hope that they shall not merely have made it safe for universal democracy, but secure for righteousness and peace among all peoples?

There was little in 1621 to indicate what has since come to pass. There is much, at present, to foretell desirable things. Three hundred years ago there was no British Empire, and the British Commonwealth was undreamed of. England and Scotland had only united their Crowns and ceased to be openly hostile nations eighteen years before. The new monarch of the two Kingdoms, to whom we owe our highly prized name of Nova Scotians, and also what this tablet, about to be unveiled by the Lieutenant-Governor, describes as "the birth of an idea," was a peculiar man, but in many respects a wonderful one. He had an odd exterior and strange mannerisms which made him ridiculous at times, in the eyes of his critical new English subjects. History has not treated him kindly. But it is certain that he was broadly educated, closely observant, and in mind, if not always in action, had practical ideas.

The constituting of what was intended to be the Dominion of New Scotland, by King James, was due to no mere whim or personal caprice, although it has been mistakenly represented as such. It was a deliberate act of policy. He had observed New France, founded and growing north of the St. Lawrence River, and threatening to spread southward. The establishment of New England to the south had been reported to him. He determined to interpose a New Scotland between them. Had his policy been pursued and maintained it would have been much better for Canada and perhaps for this Continent.

New Scotland which, by Royal Charter, he created, was endowed by him not merely with a name but with a splendid Coat of Arms and Motto, and a flag symbolic of its intended permanence. The Latinized form of that name, as set forth in his Charter, has descended to us, but only a small portion of the original territory has come with it. Original New Scotland was to embrace all south of the St. Lawrence River and north of the parallel which marks the extreme south-west point of this Province, and to stretch inland from the Atlantic to the outlet of Lake Ontario. It included all of New Brunswick, a long strip of Quebec, nearly the whole of the present States of New Hampshire, Vermont and New York. If Canada had that territory, as she should have, and might have had under wiser and firmer statesmanship, her present conditions would be greatly improved, and her outlook much brighter. It was not the fault of King James's conception or intentions that we have lost so much. To him we owe nothing but gratitude, not merely for our name and our splendid historic Coat of Arms, the interrupted use of which we intend to resume, but for his excellent and far-seeing designs. Let us freely acknowledge our indebtedness as we recall his name and his ideas to-day.

I have merely hinted at world conditions three hundred years ago in indicating British conditions at that time. What perhaps interests us more is Nova Scotia conditions, past and present. This Province, as now constituted, was far from unknown at that time. Closely following Cabot, the French had come over and minutely examined the northern coasts of this continent. Although they had established no settlement until they landed in 1604, they had made numberless voyages to Acadia, and had drawn considerable profit from trade with its natives. A British settlement had been made on the coast of what is now the State of Maine two years after the founding of Port Royal, but only to perish soon after.

The French held on and flourished in this beautiful valley. It might have been more fortunate for us as well as for them had they been left here to prosper and increase as they did on the banks of the St. Lawrence; but it was not to be. The French, although the keen, capable and always generous rivals of the British, were heavily handicapped in one respect, and in one only, in the contests for colonial possession and expansion.

The continental position of their country had denied them the opportunities for the development of seamanship, so richly enjoyed and improved by the insular British. It was seamanship which finally turned the day in Canada and North America against the French. Yet they were first on the shores of Nova Scotia and reaped the earliest harvests here.

It is interesting to recall that the Scottish were close on their heels when it came to taking final possession. Just three hundred years ago there was a "Scotch Fort" on the shores of that beautiful Annapolis Basin. It endured, as a name at least, down to within living memory. Its site is even yet known.

Thus, then, three centuries ago, the French, the Scottish and the English were co-operating, although in seeming antagonism, for the future upbuilding of this splendid Province. If one would behold the monument erected, largely by their own initial efforts, to their memory, let me say, in the one proud Latin word of the great architect, "Circumspice"—look around. This Valley is, to-day, peopled by their descendants who live in closest friendship and co-operation. They dwell together in amity in all the fruitful valleys and on all the teeming coasts of Nova Scotia, and they now number more than half a million, who are but the pioneers of millions yet to be when this fair and rich Province comes into its own, as it is rapidly doing.

Three hundred years ago, Nova Scotia was a rugged and forbidding land to all but those who had the courage to penetrate its outer walls. Almost unbroken forest covered its face. Its enormous natural wealth, except in products of the wilds, was unsuspected. But as soon as settled conditions were established, population began to flow to us and they have not only cleared the land, cultivated the soil, opened up and developed the natural resources, but they have established splendid social institutions of every kind. Schools and education they would have from the first. All other good gifts have been added unto them. There is no fairer, more promising or happier land in the world to-day, than this little,

Unveiling the First Tablet

wrongfully circumscribed Province of Nova Scotia. It is even richer in its people than it is in its natural advantages of so many different kinds.

It occupies the pride of position in North America. It was the first part of the mainland to be discovered by the Norsemen, nine hundred years ago, in A.D. 1000. It was the first part of North America to be re-discovered by Cabot, 424 years ago, in 1497. It was the first part to have a spot for a permanent European settlement discovered in it in 1605. And, most gratifying discovery of all, its people have re-discovered it for themselves of late years. They stand ready to share their wonderful find and its advantages with all worthy outsiders who may choose to come in and share their good fortunes with them.

But, be it remembered, it has not taken three hundred years to accomplish what man has done in Nova Scotia. The seed sown in 1621 "the idea which then had birth," as you will read when this tablet is unveiled, was of slow initial growth. The times were wildly stormy, and the moral atmosphere wholly unpropitious for nearly two hundred years. The last century has witnessed most of the development, and the last quarter of it far more than all the preceding.

That which the people of Nova Scotia have done during those few years, is but earnest of what they yet shall do. The United States, Canada, the British Empire, Australia, South Africa, had not been imagined three hundred years ago. In greater part they were unheard of and unknown. Who can set bounds to what this Province and this Dominion may attain before three more centuries are numbered with the past?

We of to-day should ever bear the possibilities of the future in mind and faithfully set ourselves to prepare the way for those who are to follow.

And now, on behalf of the Government of Nova Scotia, I desire to present this tablet, placed here by the Government of the Province of Nova Scotia A.D. 1921, to commemorate the Three Hundredth Anniversary of the issue of the Charter of New Scotland, by King James I. of England and VI. of Scotland, A.D. 1621, which tablet will be unveiled by his Honour, the Lieutenant-Governor of this Province.

The second tablet was presented by the Honourable Robert E. Harris, Chief Justice of Nova Scotia; Honourable Sir James Aikins,

President of the Canadian Bar Association, and W. J. O'Hearn, Esquire, K.C., President of the Barristers' Society of Nova Scotia, whose speeches follow:—

HON. CHIEF JUSTICE HARRIS.

MR. CHAIRMAN, YOUR HONOURS, LADIES AND GENTLEMEN:

On behalf of the Bench and Bar of Canada I have very great pleasure in presenting this tablet to be erected on these historic grounds to mark the establishment in this Fort two hundred years ago of the first British Court of Justice in Canada.

It is most fitting that Mr. Justice Chisholm should have been asked to preside upon this occasion, because it was he who some two years ago, first called the attention of the public to this matter and suggested that the event should be celebrated.

It has been well said that he who would know the history of a country must learn the history of the law of that country, and it is therefore appropriate that an event of so much importance in the history of this country as the establishment of its first British Court should be fittingly celebrated and commemorated.

While the Court established here in 1721 was the first British Court, it was not the first Court of Justice in Canada.

We know that at least as early as 1663 the French Governor in Council in what is now the Province of Quebec, exercised full judicial powers in both civil and criminal matters, and that there were subordinate Courts at Quebec, Montreal and Three Rivers, each with a Judge appointed by the King of France, from whose decisions there was an appeal to the Governor in Council at Quebec which was the highest Court of Appeal in the Colony.

Indeed, in this old Fort itself a Court was in existence more than thirty years before 1721.

In 1688 Sieur Goustin or Des Gouttins, a French lawyer, was commissioned as Judge and Secretary in Acadia and came out to Port Royal where he married an Acadian woman. He seems to have been dismissed by the Governor later on, but is again found acting as a Judge and his commission was renewed. He was styled "Juge ordinaire de l'Acadie." It is well established that from 1688 until the capture of Port Royal by Nicholson in 1710, the Court at Port Royal exercised jurisdiction in both civil and criminal matters.

And when the Treaty of Utrecht was made in 1713 and Cape Breton remained French, Louisbourg was established, and we find that as early as 1717 the Superior Council of Louisbourg, which consisted of the Governor, the King's Lieutenant and five other officials, was constituted a Court of Justice and continued to act as such until Louisbourg was finally captured and fell.

There were appeals from this Court at Louisbourg to Quebec and France.

The Governor in Council under British rule was organized at Annapolis Royal in 1720, and at first consisted of the Captain General and Governor in Chief, Richard Philipps, the Lieutenant Governor, John Doucette, and ten others.

On the 19th and 20th days of April, 1721, the matter of the establishment of a Court was discussed and the necessary resolutions passed by the Governor in Council creating the Governor in Council a Court of Judicature to sit at Annapolis Royal and it met in this Fort during the whole time that it existed, which was until 1749, when Halifax was settled and Cornwallis was appointed Governor and the capital removed to Halifax.

A new Council was then created which exercised judicial powers until 1754, when the Supreme Court was established.

The Court created in 1721 did not contain a single lawyer or person with legal training. The members appear to have been with a few exceptions Military Officers and the proceedings throughout seem to have been conducted much as a court martial is carried on to-day, and we find the military aspect of the Judges reflected in the proceedings and decisions throughout the whole period of its existence.

An examination of the decisions recorded in the Minutes of the Council between 1721 and 1739 shows that many of the cases before the Court arose out of disputed boundaries and titles to land, varied occasionally by an action for debt, a trial for slander, or the trial of a criminal for theft or some petty offence.

There were no cases of capital punishment or cases of a very serious nature during the whole period.

Imprisonment as a punishment seems to have been seldom resorted to—whipping, usually from twenty to fifty strokes with the "cat of nine tails" on the bare back at the cart's tail was the panacea administered in many cases, particularly to the light fingered gentry; and generally in cases of theft the offender was compelled to make restitution; sometimes of the goods stolen, but often in cur-

rent coin of the realm and in one case the culprit was bound for three years to serve the prosecutor to recompense him for his losses, costs and damages sustained.

There is one case in which the punishment inflicted seems to us in these days as possibly open to some criticism.

A sergeant had assaulted the Lieutenant-Governor, and he was sentenced to sit on the gallows for three days for half an hour each day with a halter around his neck and a placard on his bosom bearing the inscription in capital letters, "Audacious Villain," and to be whipped at the cart's tail from the Fort to the uppermost part of the Cape and back, five lashes every 100 paces, and then to be turned over as a soldier.

Assuming the distance to be from two and a half to three miles this unfortunate would receive from 220 to 260 lashes on the bare back—and every lash with a sting like a scorpion.

One cannot help wondering whether the fact that the Lieutenant-Governor was the Colonel of the Regiment and the culprit his Sergeant did not have something to do with the severity of the sentence. How far the question of military discipline entered into the sentence it is of course impossible to say. It would be interesting if we could know what the sentence would have been if he had assaulted an ordinary Lieutenant-Governor—I mean, of course, one who was not also an officer of the regiment.

Ducking in the Annapolis River at high water was the sentence of the court in the case of a lady convicted of scandal in the only case of the kind recorded. So far as I can ascertain after diligent enquiry there has not been a single case of scandal in the whole town of Annapolis Royal from that day to this.

Whether this is due to the virtues of the people, or the virtues of the waters of the river, or whether it is due to the fear that a conviction might carry the same penalty to-day, I am, of course, unable to say, and it is not a matter upon which I would hazard an opinion. It is sufficient for me to mention the fact.

We must admit that the punishments inflicted were eminently practical—and such as were calculated to prevent crime.

A perusal of the many sentences of whipping must raise a question in the thoughtful mind as to whether the Courts and Parliament have not gone too far in practically abolishing that method of punishment.

I passed my youth in a day when the birch rod was fashionable in the schools and when it had not entirely disappeared from the

homes of the people, and I am old-fashioned enough to sometimes think that some of the ills of to-day may be closely connected with the fact that the birch rod crop has been an entire failure during the last thirty years. Perhaps the same can be said of the lash.

Perhaps it is not far from the truth to say that there was in the olden time a *little too much* of both the lash and the rod, and that we have *much too little* of either in these days.

This Court, in dealing with civil matters seems to have pursued the sensible course often of endeavoring to get parties to settle their disputes amicably, and with some success.

So far as the decisions of the Court are concerned there is not one of any value as a precedent, and it seems safe to say that the Court probably did not possess a single law book or volume of reports.

We are told that at the end of the 17th century there were in England only some 70 law books and less than 100 volumes of reports.

Many of the books were in Norman French or Latin, and Coke in the third volume of his reports gives this rather quaint explanation: He says:

> "It was not thought fit nor convenient to publish either those or any of the Statutes enacted in these days in the vulgar tongue lest the unlearned by bare reading, without understanding, might suck out errors, and trusting to their own conceit might endanger themselves and sometimes fall into destruction."

The irony of this can be best appreciated by bearing in mind that the Courts had decided and established the principle that every man is supposed to know the law.

Some of the text books of that day, such as Coke's Littleton, we know were most difficult to understand even by the trained lawyer, and they were the bane of the law student.

Daniel Webster has told us of his student days that he found Coke's Littleton so difficult that he often despaired and thought he could never make himself a lawyer, and was almost going back to the business of school teaching.

And that eminent jurist and writer, Mr. Justice Story, said that after trying it day after day with very little success, "he set himself down and wept bitterly."

In view of the Norman French and Latin, and the difficulty of understanding some of the books, it was perhaps just as well that

these military gentlemen who comprised our first British Court had no books to trouble them.

It is quite apparent that these Judges cannot be accused of adhering too tenaciously to judicial methods and precedents, but they dealt out even-handed justice as it was then understood by the lay mind, and the Court seems to have had the unique distinction of never having had any of its decisions reversed.

The only appeal lay to the Privy Council which was "a long, long way" from Annapolis Royal in those days of sailing ships, and suitors generally had to accept the decision whether they liked it or not.

Only once is there a threat even of an appeal, and that was by William Winniett—himself a member of the Council. It was found that the amount involved was not appealable, and so the matter ended, but Mr. Winniett evidently felt very much aggrieved and did not hesitate to express his opinion of the Court and its decision. He refused to attend any further meetings, and the Governor suspended him and thus ended his connection with the Council.

The Court no doubt served its purpose well, and was undoubtedly of great service to the people in affording them a means of adjusting their disputes and in maintaining order and discipline throughout the country.

Taking everything into consideration it must be said that the critical eye of posterity can find but little fault with the Court or its decisions.

Perhaps I ought to say that the proceedings of the Court were from the first carried on in the English tongue, while it was not till 1727 that this reform was effected in England.

There are a number of references to attorneys appearing in the Court, but it is not clear that any of them had been educated as lawyers—one suspects that they were laymen, who were selected on account of their influence or supposed influence with the Court, or because they were accustomed to attend to business of this kind.

In 1754, or five years after the removal of the seat of Government from Annapolis Royal to Halifax, the Supreme Court of Nova Scotia was established and has continued ever since under the same title. The first Chief Justice was the Honourable Jonathan Belcher who held office for 22 years, during 10 of which he was the only judge of the court. In 1764 two additional judges were appointed. In each of the years 1809 and 1841 one addition was made, and two

further appointments were made in 1870, bringing the total number to seven, at which it has ever since remained.

It is interesting to note that between 1764 and 1834 two judges presided at every trial.

Prior to 1849 the judges of Nova Scotia held office during pleasure only, and they were paid fees in addition to their salaries. In 1849 the legislature passed an Act providing that thereafter they should hold office during good conduct, and fees were abolished.

In view of the fact that these reforms had been in effect in the Mother Country since 1688, it is difficult to understand why they were not adopted and applied here from the beginning.

Chief Justice Belcher was a man of great distinction, and an eminent lawyer, but one at least of the two puisne judges appointed in 1764 was a layman, and not a lawyer.

After the American Revolution four out of a total of five judges of the Supreme Court of the then Province of Massachusetts Bay—as it was called—who had remained loyal to Great Britain, were driven out, and the Attorney-General, Hon. James Putnam, expelled for the same cause, became one of the first judges of the Supreme Court of New Brunswick when that province was created in 1784.

Dr. Ray Palmer Baker, in a recent book, "English Canadian Literature," says that James Putnam was reputed to be the ablest lawyer in America, and that he became a judge of the Supreme Court of "Nova Scotia." This latter statement, however, is clearly a mistake, as he did not become a judge of Nova Scotia, but the mistake is no doubt due to the fact that the territory from which the Province of New Brunswick was formed had been a part of Nova Scotia until about the time of his appointment.

Another one of the four judges of Massachusetts driven out at that time was the Honourable Foster Hutchinson. He came to Nova Scotia, and was a member of the Council for some years until his death in 1799. His son, bearing the same name, was made a judge of the Supreme Court of Nova Scotia in 1810, and died in 1815.

It would be interesting did time permit to follow the history of the Supreme Court to a later period, but it would perhaps be out of place to pursue the subject further on this occasion.

We are thinking now of 1721, and it is interesting to recall that that was the year in which Walpole first became Premier of Great Britain, and that he held office for twenty continuous years, and

comes the second nearest to being a rival of our own Premier in length of service.

I am sure it is a very great pleasure to all present to have Premier Murray with us to-day, and to see him so much improved in health.

No finer sentence has come down to us that that of Hooker in his *Ecclesiastical Polity* when he wrote:—

> "Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the World.
>
> "All things in Heaven and Earth do her homage—the least as feeling her care and the greatest as not exempt from her power.
>
> "Both angels and men and creatures of what condition soever—though each in different sort and manner—yet all with uniform consent admiring her as the Mother of their peace and joy."

It is a truism to say that Courts of Justice are a necessary and indispensable part of the fabric of civilized society.

It is because of this and because of the important part the Courts of Justice play in the history of the country—and not because of the value of the decisions of the Court as precedents—that the events of 1721, which took place in this old Fort, have been thought worthy of being commemorated by this memorial tablet which I have great pleasure in now asking His Honour the Lieutenant-Governor to unveil.

Sir James Aikins' Address.

Sir James Aikins, Lieutenant-Governor of Manitoba and President of the Canadian Bar Association, said in part:

Fellow Canadians, if peradventure there are some present to whom that term does not apply, theirs is the lack of good fortune though they may not think so, then let me call you friends, for our nation is kindly disposed to all good citizens of other countries. This is a happy occasion, for it is the bicentenary of the birth year of one of the four original members of our Federation. A birth year truly. For organized society must begin by the application of its civil law and its law cannot exist until the community adopts and uses it. Law and State are of twin birth; they co-exist. So 200 years ago Nova Scotia's first court was organized to apply and administer for the first time Nova Scotia's law. Then this young province drew its breath. Helpless infant then to be cared for by its Motherland, of sturdy manhood now fair and strong and wise of which we are all proud. To you, its people, I bring greetings from

the centre and heart of our nation and from the Canadian Bar Association. Then there sat an informal Court of Justice, but a real one, the first in what is now the Dominion. Now, as we celebrate this event, Judges and lawyers from all over Canada are journeying to its capital to the annual meeting of that Association for the purpose of advancing the science of jurisprudence, of promoting the administration of Justice and the uniformity of Provincial laws relating to interprovincial business, trade, and civil rights.

Through these two centuries have treked the Nova Scotians, and others who have joined them, attracted hither by the beauty of Evangeline's land, this nature's storehouse of good things, attracted also by the sturdy and upright character of its people and by its sane laws well administered, all animated by the same patriotism, all guided by the same national spirit; in childhood, in youth, in maturity, in age they steadily advanced to the same objective which they attained, the spiritual, the intellectual and physical well-being of their people and the right to make and administer their own laws. They lived and laboured and loved and having served their generations they fell asleep. As the old Scots loved their heather hills and their clansmen so the new Scots loved their country and their countrymen. A people who have no pride in their past, in the service and sacrifice and virtues of those who lifted up their country into the sunlight, who made its name known and honoured in the world, are in nature so unworthy that they are not entitled to continued advancement and honour. They regard the past as dead, not as a living beneficent spirit which projects itself into the future if given opportunity, stimulating it to nobler things. Such are not the Nova Scotians for they have an inspiring history, quick with great actors, whose worthy deeds you are honouring with enthusiasm now. This is a time for reminiscence. We stand on the proud eminence of to-day, thankfully surveying the past, cheerfully using the present and looking into the misty future with hope and faith and courage.

"Here we raise our Ebenezer
Hither by Thy help we've come."

But the Almighty usually works His will through human agents. Nova Scotia has been blessed with well selected ones. When by the Treaty of Utrecht, 1713, France formally ceded Acadie to Great Britain, a typical experiment in government began. Law was administered and order maintained by a small group of British

officers among a population of a different language, race, and religion, and in nowise friendly to those in authority. Indeed, France and its local agents, active with energy and money and a Louisbourg force, were anxious to win back its beautiful and fertile Acadie. Those old Britishers loved Nova Scotia, too, and though they received much indifference and poor pay from the Home Government they and their successors were British to the core and succeeded in holding this gem of a province for the British Crown and establishing civil rule and courts of Justice. Had there been at the same time such alert, active and loyal agents of the United Kingdom living in Rupert's Land and British Columbia, they, too, would have held for Canada those rich British lands of the Red River Valley and of the Pacific Coast lying now south of the Canadian boundary. They were lost to us by the apathy, the neglect and the ignorance of Downing Street rulers.

Nova Scotia is therefore to be congratulated on the spirit and love of country manifested by her early administrators, lawyers and statesmen. Among them were the Lieutenant-Governor Thomas Caulfield, a veteran soldier, who described himself as being "buried alive in Nova Scotia." If he was buried, out of his living grave he wrote: "Though I had no commission for that fact, yet I hold myself blameable to suffer injustice to be done before me without taking notice thereof;" and added: "There are no Courts of Justice in Nova Scotia." After he was really buried in 1717 his words took effect, for Colonel Phillips, a fiery Welshman, became Governor in 1719, and by reason of the power given in his commission he was able to write in 1721 to the Secretary of State that "The Governor and Council had constituted themselves into a court on the model of the general court of Virginia, to meet four times a year," and he adds "for the information that military government alone prevails, keeps settlers out of the country." Three members of the Council were comissioned Justices of the Peace and empowered to "examine and inquire into all pleas, debates, differences that are or may be amongst the inhabitants of the said province."

For many years that Governor and Council acted judicially, and, as Lieutenant-Governor Armstrong wrote in 1738, "Having never had any advantage or salary for our acting as members of His Majesty's Council for this province." Think of that in the light of present-day practice.

I would not be true to Nova Scotia's early history if I did not mention some other names which appeal to Canadians generally. Gallant old Mascarene, successful defender of this place when besieged in 1744, or Lieutenant-Governor General Charles Lawrence, masterful in his decisions and administrations, a fine soldier also, who commanded the British centre when Louisbourg was taken. William Shirley, that constructive statesman, Governor of Massachusetts, an energetic guardian of British interests in America, who was ordered by the King to prepare a plan of civil government for Nova Scotia. Dalhousie, Jotham Blanchard, Annand, Samuel Cunard, Johnston, Haliburton, lawyer, judge, statesman, novelist, whose memory requires no marble symbol to perpetuate, and whose writing will be immortal in English literature, and also his younger contemporary that outstanding hero, poet, writer, orator, statesman and patriot, the Hon. Joseph Howe, the man who secured for his country the freedom of the press, mover of the famous twelve resolutions, the statesman who declared for Nova Scotians, "We seek for nothing more than British subjects are entitled to but we will be contented with nothing less," and who in about 1837 wrung from the Colonial Office the circular despatch to governors instructing them "not to oppose the wishes of Assemblies." And who penned the words which stir all true Canadians:

> "All hail to the day when Britons came over,
> And planted their standard with seafoam still wet,
> Around and above us their spirits will hover,
> Rejoicing to mark how we honor it yet.
>
> "Beneath it the emblems they cherished are waving,
> The Rose of old England the roadside perfumes;
> The Shamrock and Thistle the north winds are braving,
> Securely the Mayflower blushes and blooms."

All Canadian children should be taught the story of these worthies of Canadian history.

O! wonderful Nova Scotians, the eyes of our Dominion are looking to your province for leadership such as you have given since 1721. The only unit of our nation that had its own flag borne on every ocean by thousands of its own ships. The land where the first Elective Assembly in British North America met, a third of a century before those of the Canadas. First to have an organized

Court of Law, first to have a Chief Justice, Jonathan Belcher, whose installation began with solemn religious service in which the Rev. John Breynton preached from the text, "I am one of them that are peaceable and faithful in Israel." Perhaps our present Chief Justice has read that discourse. No doubt it referred to the Sinai and Ebal and Gerezim law. First district to have a Temperance Society, and in faith they needed it when the Garrison at Annapolis Royal had in 1749 3,000 gallons of rum, (is there any left?) and when a Bostonian wrote that "the business of one half of the town of Halifax was to sell rum and that of the other half to drink it," and when breaches of the Liquor License Act were punished by stocks or pillories for the first offence and twenty lashes for the second.

Nova Scotia has ever been steadfastly loyal to the Crown. The American revolutionists could neither cajole nor coerce them to join in it, and not sympathizers even with the Papineau and Mackenzie forcible uprising for reforms in the Government of Upper and Lower Canada. Hesitating at first about Confederation, then because it was in the interest of all Canada and of the Empire, adopting it whole heartedly and giving to it three of its greatest Federal Ministers and Premiers, Sir John Thompson, Sir Charles Tupper, and Sir Robert Borden. Yes, and offering a still nobler service and sacrifice in the Great War, when the people gave from the mite to the millions, from the lisping prayers of the child to the lives of her noble sons, gave for Canada, for the Empire for law, for order, for justice, to administer which the first court in Canada was created here two centuries ago.

President O'Hearn's Address.

Mr. W. J. O'Hearn, K.C., President of the Nova Scotia Barristers' Society said:

You have had the advantage of hearing the eloquent remarks of His Lordship the Chief Justice and Sir James Aikins in presenting the tablet on behalf of the Bench and Bar of Canada. You have been fully informed by them of the signification of to-day's event, and I feel that any extended observations on my part would be quite unnecessary and even superfluous.

I feel, however, that as President of the Bar Society of this Province I should take the liberty on behalf of the legal profession of Nova Scotia of thanking most cordially the Annapolis Historical Association and those others who are responsible for

to-day's commemoration. It is quite obvious that the event which is being celebrated to-day is one not only of importance to the legal profession in this Province, but also is important to the profession throughout the whole Dominion.

Two hundred years ago last April an important seed of our British institutions was sown in the soil of Annapolis Royal, and as the years passed by a beautiful spotless flower was developed in the shape of the tribunals and judiciary of this country. These courts, and their members, have always maintained a reputation for integrity and learning, and the Bench throughout Canada has been frequently adorned by men of high personal character, scholarship and great legal knowledge. The excellence of our courts and their personnel has been due in a large measure to the fact that in the early days of our judicial existence our judges hewed close to the line and closely followed and upheld the highest traditions of the English Bench and Bar.

Annapolis Royal may well, Sir, claim its soil as the birthplace of our first court administering the common law. We are told by Mr. Justice Chisholm in his splendid article in the *Dalhousie Review* that this first court was not composed of lawyers; and, in fact, at its inception no professional lawyer practised before it. I am quite sure once the court was established the legal profession must soon have followed; and, therefore, if this delightful town of Annapolis is going to assume the parentage of our first court, it must also give an account of an incorrigible son, the legal profession of this Province.

However, Annapolis has not been obliged to blush for its unruly offspring, the legal profession, because that profession has had an illustrious progeny, among which may be found the names of Stuart, Bliss, Uniacke, Johnstone, John W. Ritchie and Sir John Thomson, all of whom were ideal Nova Scotians and have contributed much to the intellectual, professional and public life of the Province.

May I conclude, Mr. Chairman, by congratulating the Annapolis Historical Association, and the other gentlemen to whom I have referred on the success of to-day's occasion—an occasion of intrinsic merit.

The third tablet was presented by the Vice-President of this Association, Mr. Frank C. Whitman, in the following well-chosen terms:

MR. CHAIRMAN:

It is my privilege to-day, on behalf of the Historical Association of Annapolis Royal, of which I am Vice-President, to present this tablet, commemorating the one hundredth anniversary of the arrival here of the man who is most generally and familiarly known as Judge Haliburton, author of "Sam Slick." Thomas Chandler Haliburton was born at Windsor, in this Province, but we are proud of the fact that he came to Annapolis Royal in early manhood and found a field here for the beginning of his career in the three great professions in which he afterwards became so distinguished.

He began his law practice here, and attained a judgeship in the short space of eight years.

He wrote his "Historical and Statistical Account of Nova Scotia" here, and had it printed by another great figure in our Provincial history, Joseph Howe. And he also while here gained a seat and became a prominent figure in the Provincial Legislature.

Much has been published and we are all fairly familiar with the details generally of Haliburton's life, and I need not again traverse that ground; but I think that we are entitled to feel proud of Judge Haliburton's association with Annapolis Royal, in the early, formative period of his public career, and that it is fitting that this simple memorial of the same should have a place among the offerings made to-day at this historic shrine.

I ask, then, the acceptance of our tablet, and that it be given a fitting place among the memorials in Fort Anne.

The tablets were received for the nation by the Honourable F. B. McCurdy, Minister of Public Works, representing the Federal Government, who spoke as follows:

MR. CHAIRMAN, YOUR HONOUR, LADIES AND GENTLEMEN:

Rarely does it fall to one's lot to take part in any public function more charged with historic interest than that which we have met here to-day to celebrate, for it is doubtful if any spot in the whole of our vast country with the exception perhaps of the historic battlefields of Quebec has witnessed in the course of centuries more moving incidents than the countryside surrounding this fort and your lovely town of Annapolis Royal.

I shall not attempt to even sketch in the briefest fashion the tragic scenes which have been enacted in the country round about us and which now presents to the eye of the tourist and antiquarian

THOMAS CHANDLER HALIBURTON (ABOUT 1828)

From an engraving in the Dominion Archives

such a smiling happy picture of peaceful content. These scenes to which I refer have all been stored up for us who care to seek them in the pages of history, of poetry, and of song, and they will live as long as our civilization lasts to charm, to interest, to instruct and to impress with their profound sense of the courage and nobility of purpose of the great fighters who played their parts in the struggle which persisted so long for the possession of this new land.

Before the pilgrim fathers landed at Plymouth Rock, a thriving village stood on these shores, and the early pioneers had already reaped the first crops, the first returns for their early struggles. The history of our country tells us that during the long and tragic struggle which ensued this little place, Port Royal, changed hands no less than six times before it passed finally under British rule, and if I refer to these unhappy pages of history to-day it is not with the wish to claim any particular glory for any particular country or hero, but rather to suggest that it is fitting that we should remember with feelings of humility and sympathy, the sufferings, the struggles and the achievements of those who worked and fought and opened up this lovely land. To none of them either British or French is it fitting to yield a more sincere tribute of honour and respect than to those earliest French gentlemen adventurers and Colonists who were the first to bring to this land the civilization of Europe. And if the spirits of those men who stand out so prominently in the pages of history were permitted to return here to-day and to view this gathering and to realize its object and purpose can we doubt that they who struggled and fought at such a cost of blood and suffering for possession of the land would feel that they had not lived and died in vain, but rather that in God's providence the end is good.

And what of us who are the heritors of this goodly land, we who have inherited "wells that we digged not, fields that we planted not." Is it not a country to inspire every native born son with love and affection. Where can we find a country to surpass it? I am confident that those who like myself are Nova Scotians by birth and long residence will agree with me that travel where they will no land presents better opportunities for a quiet, tranquil and contented life surrounded with peaceful plenty as the return for modest exertion. But I am being led afield and further than I set out to go. It has been a great pleasure to me to be present here to-day and to take part in this ceremony. It has called up feelings and emotions which I cannot express otherwise than to say in briefest

fashion that surely no one who is present here can ever forget the deeds and lives of those early pioneers of which this Fort is the sign, but we shall recall them only to entertain the happy conviction that after many years the bitter memories have been buried and forgotten and those of us who survive remember them only with grateful hearts for all that has been vouchsafed to us.

To you here, Mr. Premier, to you, Mr. Chief Justice, and to you, Mr. Whitman, I tender my sincere and hearty thanks for these gifts which will form a very valuable adjunct to the interest of this park, and which I am sure will be read by thousands in whom they will arouse reflections of love and respect for the things which they commemorate. I receive them as your gifts to the nation, gifts to which a high value must and will be attached and which it will be our duty and our pleasure to care for and to conserve for the instruction and the profit of generations to come.

Mr. L. M. Fortier, Honorary Superintendent of Fort Anne, then spoke as follows, and the proceedings closed:

MR. CHAIRMAN, YOUR HONOUR, LADIES AND GENTLEMEN:

As custodian for the time being of this shrine of Canadian history, and speaking for the National Parks Management, I am glad to take these splendid tablets into my keeping.

Fort Anne, as the Hon. Mr. McCurdy has said, will be greatly enriched by them; they will add immensely to the interest of the place, and the donors may feel assured that not only will these handsome gifts of theirs to the nation excite the interest and admiration of our visitors, whom we now count by thousands every year, but they may be sure also that as valued and striking memorials of great events in our history the three tablets unveiled to-day will be treasured and cared for by those responsible for the administration of the Dominion Parks, and not alone for to-day, but in perpetuity.

This day is itself epochal, and will go down in our annals as such, along with the names of those who have had prominent part in its proceedings, to one and all of whom we are all very grateful.

One interesting thing I must not omit to mention. The flags used for the unveiling ceremony, and which are now seen flying over their respective tablets, were presented for the occasion; the first—the banner of Nova Scotia—by the Saint Andrew Society of Glasgow; the second (a reproduction of the union flag of George I.) by the Historic Landmarks Association of Canada, and the

THOSE TAKING PART ON THE PLATFORM

Left to right—Hon. F. B. McCurdy, F. C. Whitman, Mayor Hardwick, W. J. O'Hearn, Judge Chisholm, Sir James Aikins, Chief Justice Harris, Hon. G. H. Murray, L. M. Fortier, Lt. Gov. Grant.

third, a present-day Union Jack, by Mrs. Laura Haliburton-Moore of Wolfville, a collateral descendant of Judge Haliburton. These flags are to be placed under glass in the museum of Fort Anne, with a statement of the facts concerning them, for permanent preservation there.

And now, while some of us who like our afternoon tea go to enjoy the hospitality of the Daughters of the Empire, all who would like to do so will be given an opportunity of inspecting the tablets more closely.

I would also invite all who are interested to attend the meeting to-night in the theatre. Some splendid papers will be read there, bearing on the historical events we celebrate, and the proceedings altogether will be instructive and interesting. The meeting is at eight o'clock, and as the seating capacity is limited, an open-air concert by the band will be given in the Fort, to entertain those who may be crowded out of our evening meeting.

And may I add a word as President of the Historical Association of Annapolis Royal? In that capacity I wish to thank the Premier for the favourable answer he has given us to-day to our petition for the revived use of the old Coat of Arms of Nova Scotia. We made that petition in the interest of historic truth—we have our answer, and we rejoice because historic truth has triumphed! Nothing could be more fitting than that this should happen on such an occasion as the present, and our venerable Premier has our heartfelt thanks for his share in the matter, which we know has been very great.

Afternoon Tea.

A large number of the visitors were entertained at tea by the Daughters of the Empire after the ceremony in the Fort. Mr. Perkins kindly permitted the beautiful grounds of The Hillsdale to be used for the occasion, and all who attended were charmed with the arrangements. It was a matter of general regret that the Regent, Mrs. C. C. King, was indisposed and unable to be present, but her place was ably taken by Mrs. Dan Owen, and the affair as a whole was a marked success, and as some one said, one of the brightest and most memorable things about our celebration—due, of course, to the splendid and effective team work which characterises every enterprise undertaken by Fort Anne Chapter of the I. O. D. E. We cannot say too much in praise of this feature of the general programme.

Evening Meeting and Open-air Concert
August 31st.

In the evening the Town Band gave a concert in the Fort, beginning at 7.30, and many were there to enjoy the excellent music.

Every seat in the theatre was filled when, at eight o'clock, Mr. Justice Chisholm again took the chair for the joint open meeting of the Historical Societies, to listen to papers on subjects connected with the day's celebration.

The first paper on the programme was one prepared by Colonel Alexander Fraser, LL.D., Archivist of Ontario, and Secretary to the Lieutenant-Governor of that Province. Unfortunately Colonel Fraser was prevented from being present by the recent death of his chief, Lieutenant-Governor the Honourable Lionel H. Clarke, but his paper was read for him, very excellently, by Mr. Dugald Macgillivray, of Halifax. The paper follows:

The Royal Charter of 1621

The study of historical origins rarely lacks in interest. In so far only as we are able to study the development of a country from its beginning and through the various stages of its growth, can we obtain a true and adequate historic perspective of it. In the Royal Charter granted in 1621 to Sir William Alexander lies the origin of Nova Scotia as a Province, and of its name. On the conditions leading up to this grant, and consequent upon it, as well as on the Charter itself, I have been asked to give you, this evening, a brief address. This occasion I regard as quite important, marking, as it does, an event of supreme interest in Canadian history, and I appreciate the honour of being assigned this special subject.

At the outset a few words are due to the grantee of the Charter, whose name is perpetuated in the threefold character of statesman, colonizer, and man of letters. Only the other day the first volume of a new edition of his poems appeared from the Manchester University Press under the able editorship of Kastner and Charlton. In neither character, however, did he achieve first-rate distinction; nevertheless, time and circumstance combine to preserve his name to the world, while his connection with the Province of Nova Scotia will be of perennial interest.

William Alexander was born at Menstrie, a small property beautifully situated in the parish of Logie, near the famous Ochil Hills, between four and five miles distant from the historic town of Stirling. The date of his birth is uncertain. It has been placed at 1567, 1580, and more recently at 1570. The family was reputed to be of ancient lineage, deriving from the Macdonalds of the Isles through the MacAllisters of Loup, Argyllshire. This is doubted by Laing, and having regard to the tendency in those times to construct fanciful genealogies, the caveat may be justifiable; on the other hand, the careful historians of Clan Donald concede the MacAllister descent. A sentimental interest would thus attach to the early connection of Macdonald blood with Nova Scotia now so largely inhabited by descendants of the Highland clans. The Alexanders were of the class known as the smaller barons who held their lands of the great crown vassals. Their hereditary patrons were the Earls of Argyll, and William Alexander, having passed through the grammar school of Stirling (Thomas Buchanan, a nephew of the celebrated George Buchanan, being rector), and through either St. Andrew's or Glasgow University (both are mentioned) and Leyden, travelled abroad in France, Spain and Italy with the young Earl of Argyll—afterwards a powerful Scottish noble—who later on introduced him to Court. He was appointed tutor to Prince Henry of Scotland, and before long won the personal favour of King James.

Nowhere was the expected death of the eccentric Elizabeth awaited with more interested anxiety than in Scotland, in whose ancient royal house lay the succession to the English throne. James, more eccentric and almost equally famous, was feverishly waiting for the news, and when he crossed the Border (in 1603), many of his countrymen were in his train, among them the poet-tutor of Prince Henry.

James's accession touched two great eras in British history. The full-orbed splendour of the Elizabethan age was lingering in the west, and the rosy-fingered dawn of the epochal seventeenth century gleamed above its glorified eastern horizon. The genius of Milton and Shakespeare reigned over the republic of letters; the chivalry of Sidney and Raleigh still touched the imagination of fashionable men and women; Drake, Cavendish and Gilbert gave zest and ardour to maritime enterprise; and the wealth of Ormus and of Ind waited on the galleons of the awakening nations; while the skill of the master-artists in political intrigue was exercised

under the influence of the dominant Cecil, and was already taking the form of what was to be a binding tradition. Into this current of affairs, in the vigour of mature manhood, Alexander was drawn, with exceptional opportunities of observing and learning. He learned well. His rise in London was rapid. He became a gentleman extraordinary of Prince Henry's private chamber; Master of the Household, and received, in 1609, the honour of Knighthood. The Prince died in 1612, and in the year following, Alexander was selected to be one of the Gentlemen Ushers of the Presence to Prince Charles, afterwards Charles I., and in 1614, was appointed to the difficult and onerous office of Master of Requests, the duties of which brought him into delicate and close relations with not a few of his influential fellow-countrymen. With some of them he made useful friendships which he turned to account when his most promising opportunity arrived. Meanwhile he retained the good-will of his sovereign who appreciated his literary pursuits, collaborated with him in a metrical version of the psalms of David, and reposed in him an implicit confidence.

The great movement of the time was the plantation of overseas colonies. It began in the reign of Elizabeth, who granted to Sir Humphrey Gilbert and Sir Walter Raleigh patents of discovery and colonization resulting in the nominal acquisition of North Carolina and Virginia, and the new century was ushered in by Gosnold's eventful voyage. Then came the Virginian Charters and the beginning of the rills that with increasing and accumulating flow marked the expansion of England into the great empire over which floats our own flag to-day. These throbbings of ambition stand to the credit of the great Englanders of the seventeenth century, but it is only fair to state that the first Stuart King of England, "the wisest fool in Europe" understood, appreciated and effectively encouraged, the commercial and colonizing aspirations of his enterprising subjects, and that without his unfailing interest, some of the great opportunities of the time might have been missed. Before the close of 1620, the patent for New England was issued, and the Mayflower Compact extending from the 40th to the 48th degree of north latitude was signed and sealed at Cape Cod.

Alexander's confidential position at court enabled him to become familiar with, and to form a favourable estimate of these projects, and consequently when he was consulted by the King as to the removal of the French, who had been dispersed by Captain Argall from Port Royal—within New England territory—he saw

the possibilities of the situation, and conceived the idea of founding a Scottish settlement in the new world. Already there were in existence, New Spain, New France, New Holland, New England; why not a New Scotland? "Fertile in device and expert in execution, and of an unswerving tenacity of purpose," as he has been described by Charles Rogers, he lost no time to give his idea practical effect. In this resolve he was encouraged by Captain John Mason, Governor of Newfoundland, who had acquired a knowledge of the unsettled and congested conditions in the islands and on the west coast of Scotland when associated with Bishop Knox in suppressing lawlessness arising from clan feuds in these parts; and by Ferdinando Gorges, Governor of New Plymouth who had experience in colonization, and through whose influence later on the Charter rights of the New England Company over Acadia were surrendered to permit a re-grant of the lands to Alexander. To these circumstances Nova Scotia owes both its origin and its historical connection with Scotland, which has stood, and stands, for so much in the spiritual and material welfare of the Province. While Alexander's scheme was designed primarily to further his own fortune, it does not necessarily follow that he was devoid of patriotic motives, or that he was indifferent to the benefits which ought to acrue to his native land from a flourishing, overseas colony. He purposed to provide an outlet for Scottish enterprise for the advantage and the credit of Scotland; hence, the name, "New Scotland." King James viewed Alexander's application with favour. The king had singular and consistent faith in colonizing as a means of increasing the national prosperity; and in so far as it might provide new industries and new opportunities for labour, he believed in its power as a civilising agency. An interesting event in his Scottish reign, in this latter respect, was his attempt to restore and maintain law and order in the Hebridean Isles. In the year 1598 he granted the forfeited lands of the Lewis, Harris, Dunvegan and Glenelg to an Association of Lowland gentlemen (known popularly as the "Fife Adventurers"), for the purpose of reducing the turbulent clans to obedience to the laws, by furnishing to the people peaceful, industrial employment. The methods of carrying the project into effect rather than the demerit of the conception, may have caused its failure; but the failure of repeated efforts did not weaken James's confidence. The tenacity with which they held to opinions formed in youth by the precept of tutor or by the example of parent was a striking characteristic of the last four

Stuart kings. They counted no price too high, no violation of good faith too base if such would promote and establish the principles they conscientiously entertained, and in which they believed—whether pertaining to Church or State. In this, indeed, they were conspicuously true to the Scottish type, whether of the persecuted or the persecuting class; alternately coercing or resisting, as the case for the moment might be.

After his accession to the English crown James found fields in America more promising than those he had essayed in the Hebrides, and, therefore, in complying with Sir William Alexander's request, he had the double satisfaction of gratifying a friend and of once more indulging in a favourite policy. The application was made direct to the King, who in turn recommended it to the Lord Chancellor and Privy Council of Scotland in terms that left no doubt as to the royal will. The form of the King's letter is in itself an interesting thing. After the formal salutation and greeting, it proceeds, in part:

> "Having ever been ready to embrace any good occasion whereby the honour or profit of our Kingdom may be advanced, and considering that no kind of conquest can be more easy and innocent than that which proceeds from plantations specially in a country commodious for men to live in yet remaining altogether desert or at least only inhabited by infidels, the conversion of whom to the Christian faith (intended by this means) might tend much to the glory of God—considering how populous our Kingdom (Scotland) is at this present, and the necessity that idle people should be employed, preventing worse courses—there are many that might be spared, of minds as resolute and of bodies as able to overcome the difficulties that such adventures must at first encounter—the enterprise doth crave the transportation of nothing but only men, women, cattle, and victuals, and not of money, and may give a good return of a new trade at this time when traffic is so much decayed—therefore we have the more willingly hearkened to Sir William Alexander who has made choice of lands lying between New England and Newfoundland, both the Governors whereof have encouraged him thereunto."

The grant was to Sir William, his heirs, and assigns, or "to any other that will join with him in the whole or in any part thereof," to be held of the crown as part of Scotland. The royal warrant was signed by the King at Windsor on the tenth of September, 1621, and was registered on the 29th of that month. The land thus conveyed was of large extent, though, of course, much smaller than the original grant to New England, of which it formed but a surrendered part. It included: The lands and islands within the promontory

of Cape Sable, westward to the roadstead of St. Mary, crossing its entrance or mouth of that roadstead to the St. Croix River, following to its remotest source, from that indefinite place, direct north to the St. Lawrence; eastward along the south shore of the river to Cape Gaspé, then south-southeast to the right of the Bacalaos Isles, onward to the mouth of the Gulf at the northernmost point of Cape Breton and from there southward to and including Sable Island, and to the starting point of that Cape;—or the present-day Nova Scotia (including Cape Breton), New Brunswick, part of the State of Maine, and part of the Province of Quebec. The Charter provides that the lands so granted: "Shall in all future time bear the name of New Scotland in America"—("Quaequidem terrae praedictae omni tempore affuturo nomine Novae Scotiae in America gaudebunt"), and, let us hope, that in all future time Nova Scotia it shall be.

The rights and privileges conferred on Sir William Alexander by the Charter have been considered as almost unlimited. They were, indeed, large, but if the usages of the time be taken into account, the concessions will not appear excessive or exceptionally generous. Settlement and occupation involved great risk, not only to invested capital, but to life itself. Enemies were many; competitors sometimes drew the sword! hostile Indians roamed the forests and canoed the rivers, and white men disputed the occupancy and ownership of the soil. The tenure was precarious and subject to the oft-varying fortunes of war. To settle and govern a province, thus conditioned, was no light task, and without a large measure of potential authority, would have been impossible. Keeping these things in view, we shall not find the powers invested in Sir William Alexander unreasonably exorbitant, large though they undoubtedly were.

Among the rights conferred were: All *minerals*, which (except a tenth royalty on gold and silver), were to be untaxable;—the more easily to bear the large expense of operating and of reducing and refining the ores;—*forests* without restrictions; the *fisheries* in fresh and salt waters, and pearls; the spoils of the *chase*, hunting, etc. Any of these things that might be sold or inherited were granted with full powers, privileges and jurisdiction of free royalty forever. There were also granted—the patronage by which clergymen were appointed to churches; the offices of justiciary and admiralty; the authority to establish free ports, markets, and fairs; to regulate fees and trade revenues; to hold courts of justice; to

represent the crown on the coasts and within the bounds, as hereditary Lieutenant-Governor of New Scotland. . . . And in that capacity, to erect civil and municipal jurisdictions, to make ordinances for government and for the administration of justice in civil and criminal cases: the laws and their interpretation to be as consistent as possible with those of Scotland. In case of sedition or rebellion he could invoke martial law as might be done by any other Lieutenant of the King in an overseas dominion. To encourage settlement, honours could be bestowed on deserving persons; and power was given to enforce the fulfilment of contracts; to make grants of land; to use the necessary means for the protection of life and property; and to carry on overseas trade and commerce, on which, after three years' exemption, the crown became entitled to an impost of five per cent. Emigrants to New Scotland were required to take the oath of allegiance to the King before embarking; settlers, their children and posterity were entitled to enjoy all the liberties, rights and privileges of free and native subjects of Scotland, or of other English dominions "as if they had been born there." The power to regulate and coin money was granted in the interest of a free movement of trade and commerce. These were the main points in the Charter from a business point of view.

Sir William was appointed Lieutenant-General of the Province and this office was made hereditary. A Common Seal, pertaining to the office of justiciary and Admiralty, was provided for. On one side of it, the Royal Arms were to be engraved with the words on the circle and margin thereof: "Sigillum Regis Scotiae Angliae Franciae et Hyberniae," and on the other side the image of the sovereign with the words: "Pro Novae Scotiae Locum Tenente."

The Province was incorporated in one entire and free barony which was to be called in all future time by the name "New Scotland"—"In unam integram et liberum dominium et baroniam per praedictum nomen Novae Scotiae omni tempore futuro appellandum." Provision was made for Sasine; enfeoffment; for the ratification of the Charter by the Scottish Parliament; and a promise was given of its renewal and enlargement to meet changing conditions. The quit-rent to the Crown was to be an annual payment of one penny of Scottish money on demand. The nature of this condition has been misapprehended by some writers who, in the moiety find evidence of improper alienation of the public domain, overlooking the fact that it was but the nominal superiority fee, having, or intending to have no relation to the monetary value,

or the public policy involved in the transaction, which were based on entirely different considerations. The real and decidedly onerous condition of the tenure was the settlement by Scottish emigrants of the lands so granted, in default of which the Charter would lapse. To some of us this principle might appear to be unsound, but it is in accord with the practice on which large business then proceeded, on which, indeed, the foundations of Empire were laid, and, mutatis mutandis, with the practice in our own day except in so far as the principle of public ownership has been applied.

For the purpose of taking possession of his lands after the feudal fashion then prevailing, Nova Scotia was made a part of the county of Edinburgh, and at Edinburgh Castle the ceremony of Sasine was performed.

That Sir William Alexander appreciated the difficulties involved in taking up his patent is evident from the fact that he had in advance sought the help of useful friends in Scotland. Perhaps nowhere could be found a more desirable class of settlers than among the Scottish borderers—a hardy, healthy race, inured to toil, not unfamiliar with the use of weapons of defence, or offence, if need be, and in sufficient numbers to be drawn upon without serious disturbance or loss to existing local industries. His first step, therefore, was to enlist the co-operation of his friend, Sir Robert Gordon, of Lochinvar, from whose estates in the Stewarty of Kirkcudbright, it was expected a large number of emigrants might be obtained. To secure Sir Robert's interest, Alexander surrenders the part of his barony comprising Cape Breton, for which a Crown grant was given to Sir Robert Gordon and to his second son, Robert, conjointly. The new name given to Cape Breton under Gordon's Charter was New Galloway. Association with Scotland was sought to be further strengthened by appealing to the national sentiment through the subtle influence of Scottish place-names. The Solway, the Tweed, the Forth and the Clyde, gave their names to New Scotland Rivers. The "Province of Alexandria" was personal, but there could be no mistake as to the national character of the "Province of Caledonia" and the "barony of New Galloway." A Presbyterian clergyman and one artizan joined the party of farm labourers at Kirkcudbright, and the vessel left in June, 1622, less than a year after the date of the Charter, but was detained at the Isle of Man until the month of August. The promised land was sighted about the middle of September; a storm prevented landing and the vessel was driven back to Newfoundland where the

passengers wintered. They had been meagerly fitted out; money was scarce, provisions short, and it was necessary to send the vessel back to England for fresh supplies. The clergyman and the artizan died; the labourers scattered to find employment among the fisheries, and the next year, when a ship arrived at St. John's with additional settlers the original party could not be assembled. A party of ten, was selected to visit New Scotland and to report on the prospects of settlement. The result was encouraging. They returned to England. Their report, which was published by Sir William, with an appeal for emigrants, is now a valuable Canadian historical pamphlet. These two attempts at colonizing practically ruined Sir William financially, and the estimated loss of £6,000 sterling was made a public charge on the exchequerer, but never was discharged. It was then he bethought himself of the King's success in raising £225,000 by the sale of Ulster Baronetcies to two hundred and five English gentlemen. Might not what succeeded so well in the plantation of the North of Ireland in 1613 be repeated with comparative success for New Scotland? The Scottish lairds and gentry were a poorer class than the affluent English squires, so the price was proportionately reduced, i.e., from £1,100 to £166 (3,000 marks) each, which sums were to be applied to settlement expenses exclusively under the personal check of the subscriber. We are apt to be shocked at this means of raising money, but "tempora mutantur nos et mutamur in illis." There was a time in England when chivalry was rewarded by a lady's smile, and when some renowned knights drew the sword for the very practical purpose of making a living, inconsistent enough though these two conditions may seem. There was a time also when public honours and dignities were openly appraised and ownership and precedence striven for, but that was a time before the veil of delicacy was drawn over the entrance to the Privy Council and before a Prime Minister of Canada persuaded himself that He was the royal fountain of honour, and possessed the right to serve out its refreshing draughts with the assistance of the party whip as cup-bearer! Those who study the records of the past at close range learn, whatever may be generally thought to the contrary, how little fundamental change takes place in human nature in the course of long centuries, notwithstanding the change of environment and of manners. No public conscience was shocked by the grants of titles in the reign of James or of his successor, at a

set price; the money obtained in this way going to the support of schemes for the public good.

Before the measure became effective James the VI. died. Two months later the first baronets of New Scotland were created. They deserve to be mentioned as the first members of a great social order which has left a deep impression, if not directly on Canadian, at least, on Scottish life. They were: Sir Robert Gordon, son of the Earl of Sutherland; the Earl Marischal (Keith) and Alexander Strachan of Thornton. On the day following five names were added to the roll: Sir Duncan Campbell of Glenorchy, ancestor of the Marquis of Breadalbane; Robert Innes of Innes, ancestor of the Duke of Roxburgh; Sir John Wemyss of Wemyss, ancestor of the Earl of Wemyss, David Livingston of Dunipace, and Sir William Douglas of Glenbervie. No fewer than forty-two peerages are still held by descendants of the original baronets of Nova Scotia, among them names so distinguished as those of the Marquess of Aberdeen, the Earl of Rosebery (Marquis of Midlothian), the Earl of Minto, Lord Reay, the Duke of Abercorn, Lord Elibank, the Marquis of Curzon, (Keddleston), the Marquis of Ailsa, Baron Macdonald of Sleat, the Earls of Cromartie, Caithness, Carnwath and Mar and Kellie, the Duke of Queensberry, the Earls of Lauderdale and Seafield, the Marquis of Bute, and Lord Ochiltree. Forty-five chiefs of clans or heads of clan cadet families received the honour, among them being: Macdonald, Gordon, Campbell, Murray, Colquhoun, Forbes, MacKay, Stewart, Ogilvie, MacKenzie, Sinclair, MacLean, Munro, Menzies, Ross and Grant; as well as such Border families as Maxwell, Douglas, Hume, Blackader, Stewart of Galloway, Riddell, Agnew and Hannay. All parts of Scotland were represented, and Scottish life and character was reflected in the roll of honour. The recipients were not selected favourites; the honour was not merely bestowed, it was besought, and as we have seen, paid for. The number of titles was limited to one hundred and fifty, and during the period when colonization settlement was still hoped for (1625-1638), one hundred and thirteen titles were granted. Creations continued afterwards in a more or less desultory manner, until 1707, the year of the Union of England and Scotland, when they ceased.

The country was divided into two provinces, each province into several dioceses, each diocese into ten baronies, and each barony into six parishes. Each barony was to be six by four miles in extent, fronting either the sea or navigable river, and each baronet

was to receive a grant of at least sixteen thousand acres. The social precedence was to be next to the youngest sons of Viscounts.

The conditions of settlement have been described as prohibitive. Those early days, it is true, were not the days of departmental regulations revised and improved from year to year in the light of experience, to meet varying conditions; but the terms offered do not seem to suffer by comparison with those of contemporary settlements. Sir Robert Gorden of Lochinvar for his Cape Breton estate formulated these:

> "The landed gentleman was to hold the soil in fee for ever.
> "The farmers were to hold their lands by lease.
> "All were to pay in kind to the Lord proprietor, after a specified time, one thirteenth of the whole income of the land.
> "The artisans and craftsmen were favoured by having the rents of their lands, probably only house-lots, free during their lives, but to be subject to rent to their successors."

Alexander's intention, with respect to the baronetcies was twofold: to make such a geographical distibution of the honours throughout Scotland as would embrace those rural parts in which, because of an excess in the population, the major portion of the emigrants ought to be available; and, also, to include members of noble families having considerable landed interests and prestige in that kingdom. Both these classes, it was believed, would naturally be best fitted to divert either migration or overplus to the new overseas Scottish colony. Moreover, the fact that the title itself was founded on the charter of New Scotland, and based territorially thereon was bound to inure to a permanent and friendly interest in Nova Scotia of which the baronets and their descendants were in effect made hereditary citizens, though not compelled to reside in the country. There was in addition to this, as a bond, the substantial grants of land given with the title. Had the project succeeded some of the most influential men in Scotland would have an abiding interest in the prosperity of the country that could scarcely be hoped for in any other way.

The baronetcies, however, did not provide the necessary funds, and while Alexander made effort after effort to advance settlement, other serious difficulties arose. Charles was as friendly disposed to Alexander as was James, but his rule brought trouble at home and abroad. The treasury was hard pressed. The public mind was becoming unsettled. Entanglements with France affected colonization adversely, and Acadia passed from one sovereignty to another

with a frequent and unfailing recurrence, fatal to security of title or investment. In 1631, Charles requested Sir William Alexander, at the instance of the French Court, to remove all the people from Port Royal and deliver it up to the French. This practically meant a breaking up of the colony; for, although Charles held that he had not surrendered England's title to the lands of Acadia, a position not inconsistent with the language of the treaty under which the surrender was made, nevertheless, the King's act brought to an end Alexander's work of actual settlement in Nova Scotia.

He became Secretary of State for Scotland and attained to the peerage by the titles of Earl of Stirling and Dovan, but his great enterprise exhausted his resources and in 1649 he died, financially involved.

The possibilities of that enterprise were great, and Sir William Alexander showed uncommon vision, for his day, in evolving a scheme which, under capable business or commercial control, might have brought to Nova Scotia prosperity equal to that enjoyed in New England.

Instead, we have, in his case, an example of a poet, a philosopher, an accomplished civil officer with dreams of empire revolving in his mind, going beyond his depth in the sea of practical business life. Yet he was a great pioneer with a prophet's faith, a promoter with the promoter's unfailing enthusiasm, a gentleman adventurer with the unbending courage of his ancient race, and a choice spirit which hope deferred was unable to break.

His motives in the undertaking were doubtless of a mixed character, but the following summing up by Alexander, himself, of the advantages offered by American colonization reveals, it may be supposed, his real sentiments: "The greatest encouragement of all for any true Christian is this, that here is a large way for advancing the gospel of Jesus Christ, to whom churches may be builded in places where his name was never known; and if saints in heaven rejoice at the conversion of a sinner, what exceeding joy would it be to them to see many thousands of savage people who do now live like brute beasts, converted unto God, and I wish (leaving these dreams of honour and profit, which do intoxicate the brains, and impoison the mind with transitory pleasure) that this might be our chief end to begin a new life, serving God more sincerely than before, to whom we may draw near by retiring ourselves further from hence."

His bequest to Nova Scotia was a significant name,—a name in which there is much; and a political association from which much has been already derived and from which still more is to follow. When the time was ripe the potency of both asserted itself, for the old connection was not, and could not be, entirely forgotten. There were those in Scotland, who had never accepted the French claims of sovereign or treaty rights in their entirety, and who, with good reason, never forgave the Carolii for their ambiguous surrenders. But the time was not yet propitious. Civil and religious strife, the scaffold of Whitehall, the disastrous Restoration intervened.

The results designed by the treaty of Utrecht were necessarily tardy, if not altogether unattained; yet withal, from the acorn planted by Sir William Alexander has grown the wide-spreading sturdy oak, under whose shadow we are to-day celebrating three hundred years of stirring history. When the time arrived—and, if we consider, the right time rarely fails to arrive—Old Scotland contributed the men and the women for whom New Scotland had so long waited, but, as we now know, in the light of events, had waited not too long; and with them religious, moral and political ideals which could not have been contributed by the Scottish people of Sir William Alexander's generation, but which were later developed, tried and refined in the superheated fiery furnace of persecution and counter persecution, in which prelacy and presbyterianism, in the wonderful, but no longer inscrutable designs of divine providence, alike shared, for the now apparent purpose of establishing a strong, virtuous, and tolerant populace in this favoured land which they love none the less that its name is Nova Scotia.

Next came the following paper, read by its author in person:

THE COURTS AND THE COMMONWEALTH.

By Charles Morse, K.C., D.C.L., *Registrar of the Exchequer Court of Canada.*

WE are assembled on this occasion to commemorate certain events in the early history of Nova Scotia. Conceding this to be the reason for our presence here, let me ask what it was that impelled us to come and take part in this celebration? Regarding more particularly the event in respect of which I have

been given a place on the programme, namely, the establishment here two centuries ago of a Court of Judicature administering the English Common Law—the first to appear in the country now known as Canada—do we come merely with the idea of doing homage to the memories of certain men who, in a vanished day, set up a scheme of social order that has faded and left not a wrack behind, or does our presence indicate that we are persuaded that these men were not only the pioneer builders of an enduring political community which has not yet attained the fullness of its stature, but were also the chosen instruments of Providence for enlarging the New World boundaries of civilisation along the lines of English polity? If my latter suggestion be the correct one, then indeed we shall have caught the true meaning and value of this celebration; for it is only in this way that we can view it from the vantage-ground of the philosophy of history. Speaking generally, the purpose of history viewed from that vantage-ground is not to thrill our souls with the personal achievements of soldiers and statesmen of a by-gone age—fascinating and inspiring as the contemplation of them may be—but rather to lead us to discern, behind and underlying all their achievements, the working of that impalpable and pervasive force—call it what you will, Providence, Destiny, or the Volksgeist—which used these great men as instruments in attaining its ideals and aims. That, I think, is what Carlyle means when he speaks of great men as texts in "that divine Book of Revelations, whereof a chapter is completed from epoch to epoch, and by some named history." (*Sart. Res.* c. viii). Moreover, we cannot apprehend the unity of purpose in history if we estimate the spirit of a particular epoch as something disparate and unrelated to that of the past or that of the present. There is no effectual break in the chain of continuity. Upheavals and impediments may deflect it here and there, but the stream of tendency holds its onward course. The ideals and aims of present-day civilisation are the product of past social thought and practice. Superficially they may appear to be as guiltless of pedigree as the plutocrats that emerged from the recent War; but in reality they bear the indelible impress of genesis and causation traceable to an earlier age than ours. Even the Dark Ages are not so tenebrous that they throw no light on modern civilisation; nor can the roaring of the young lions of our weekly press effectually drown the voice of the early Victorian conscience, or subdue the mid-Victorian taste.

This is undoubtedly the view of the unity and purpose of history held by many of the ripest minds of modern times. The late Frederick William Maitland—who added to his supreme qualifications as a scientific historian the quality of a master of the art of letters—said:—"Such is the unity of all history that any one who endeavors to tell a piece of it must feel that his first sentence tears a seamless web." (*L. Quart. Rev.* vol. 24, p. 13.) Mr. Delisle Burns supports the view with great lucidity in a recent work:—"The past is so entangled with the present that we cannot understand the political situation in civilised countries without continual reference to situations no longer in existence. To speak platitude then—History is an explanation of how we come to be doing what we usually do. . . . Thus unless history gives us some practical knowledge it is useless. It must show us how to change the present into a better future, by showing how the past became the present. . . . A certain amount of good, along with evil, exists in the present relation of men and States; that good is in part an old ideal realized, in part a basis for further progress." (*Political Ideals*, pp. 11, 12.) Professor Frederick J. E. Woodbridge expresses himself in the same sense when he says:—"History is itself essentially the utilisation of the past for ends, ends not necessarily foreseen, but ends to come, so that every historical thing, when we view it retrospectively, has the appearance of a result which has been selected, and to which its antecedents are exclusively appropriate. In that sense purpose is discoverable in history." (*The Purpose of History*, p. 4.) Indeed, it would seem that Cicero nearly 2,000 years ago anticipated these modern views when he said:—"Quid enim est aetas hominis, nisi memoria rerum veterum cum superiorum aetate contexitur?" (*Or. ad M. Brut.*, 34,120.)

And so I am sure you will agree with me that it would be idle to commemorate any notable event in the history of our young country without endeavouring to apprehend its pragmatic value for our own times.

What I have predicated of the purpose of history in the large is equally true of every particular field or department which it embraces. *Pace*, Sir John Seeley, and his opinion that political science is not a thing distinct from history but inseparable from it (*Introd. to Pol. Science*, Lect. 1), I like to think that history has as many fields as human life has; and that to identify it with the science of politics is not only to defer its beginning to a comparatively recent age—for political science emerged from the thought of

Aristotle and not earlier—but to restrict the boundaries of its reasonable domain and rob it in a large measure of its activities. History must be larger than any one science because, regarded as the medium by which order or purpose in human affairs is revealed, it is a science in itself. I have no time to labour the point, and it must suffice for me to say that my present and intimate concern is with the purpose of history as related to that early event in the political annals of Nova Scotia to which I have already alluded. I shall not be embarrassed in my consideration of it by the knowledge that the Court was a crude experiment so far as its constitution was concerned, and confessedly temporary in its purpose. It could not be otherwise, seeing that no serious attempt was made by the British Government to settle the country until some thirty-six years had elapsed after the Treaty of Utrecht. If I only saw in the creation of this Court of Justice at Annapolis Royal, in 1721, an official act more or less worthy of notice in the early history of British rule in the Atlantic provinces of Canada, then, of course, my interest in it would be purely antiquarian. But when I find in it proof of the persistence of racial mentality throughout the course of civilisation, when I discover that the minds of the men who set up this court were dominated by the desire—a desire amounting almost to a passion—for political institutions, stable and yet benign, that has been one of the characteristics of the English race since the date of Magna Charta, then I feel that I am in touch with a real and living bond between the eighteenth century and the preceding centuries that are embraced in the period of our political development. I am led to rejoice in this event because it stimulates my patriotism, strengthens my faith in the ideals of those who framed the basic structure of our free institutions, and deepens my insight into the purpose of history in recording the epochs of progress of a race strong in the will not only to live but to live well. Hence its pragmatic value to us in these days when the voice of the pessimist is telling us that the present distress of nations is only the prelude to a new and awful dark age. (Cf. Dean Inge's *Outspoken Essays, passim.*)

It is apparent to every one who reads with any degree of care the official documents dealing with the matter that Governor Philipps, and those associated with him in the government of the colony at the time, were responsible in a very ample way to the political ideals of the race to which they belonged. They were constrained by the strong bias of the English "group mind" for Order. Now the

great lesson that Rome of the Caesars teaches modern times is that Order is the one foundation upon which that political entity we call the State can rest secure. It is also true that Liberty is essential to civilization, and that a State whose people are not free can never progress. But Liberty without Order is a vain and inconstant thing, as Matthew Arnold very clearly reasons out in his *Culture and Anarchy* (c. ii). France at the close of the eighteenth century, and Russia in our own day, have afforded very dreadful demonstrations of this truth. Order, then, is to be regarded not only as the *élan vital*—to borrow a Bergsonian phrase—but as the guarantee of Liberty. Again Order can only be realized and made operative through the machinery of the Law, and the administration of the Law is, of course, the business of the Courts. This is true of western civilisation as a whole; but it is more particularly emphasised in English polity and its American derivative than in that of other nations. We have only to read Montesquieu and de Tocqueville to be convinced of that. Thus we are led to see that the Courts must perform a very important function not only in the early stages of social development, when men have to be taught the hard lesson that civil liberty means the subjection of the individual will to the collective will of the community, but also in conserving the equilibrium between the rights and obligations of citizenship when social relations grow more complex. It is a function of nation-building in a very real sense; and it is a function of tutelage when the nation has developed into a State.

As the range of this paper, as well as the time for its presentation, are necessarily limited, I am much pleased that Mr. Justice Chisholm's admirable and fully documented articles in recent numbers of the *Virginia Law Register* and *The Dalhousie Review* relieve me of the necessity of inviting your attention to any lengthy abstracts from the official papers relating to the foundation of Governor Philipps's Court. I shall, therefore, treat it as a more or less familiar event in history, having its place in the development of English Judicature beyond the confines of the homeland. My particular undertaking is to link up this event with its antecedents. To do this I must make a more or less comprehensive retrospect of the past. I hope I may be favoured with your interest throughout; but if I rested on Sir Frederick Pollock's view perhaps I need offer you no apology, because he says that it is no more possible to be a serious student of history without learning a good

deal of law than it is possible to draw the human figure correctly without learning its anatomy. (*Essays in Jur.*, etc., cap. viii.)

In entering upon this retrospect I am fortified by the opinions of two writers of undoubted authority. In his most fascinating sketch of the Law Courts, entitled *The King's Peace,* Mr. Inderwick speaks of the wonderful development of English polity through the wisdom and courage of the judges in the Law Courts and without the active interference of Ordinance or Statute. He says: "The more freely this subject is discussed the more clearly will it appear that our laws have been framed and our procedure has been settled in the interests of the people; and that for their benefit these Courts exist; that through the medium of the Courts internal quiet is secured, contracts are enforced, rights are respected, and injuries are redressed; and that the safety, the freedom, and the social happiness of our nation are mainly dependent upon the fearless and impartial administration of the King's Peace." (Intr. p. xviii.) Language similar to this is used by Beamish Murdoch, the distinguished commentator on Nova Scotia Law. (See his *Epitome of N. S. Law,* vol. 3, Bk. iii. p. 49.) Professor William McDougall, who, by the way, regards nationhood as essentially a psychological conception, and posits mental organisation, rendering a people capable of collective deliberation and collective volition, as the prime condition of nationhood, makes this observation: "It is owing to the unbroken continuity of the English nation through so long a period that its organisation is so stable and plastic, its national sentiment so strong, its complex uncoded system of judge-made law so nearly in harmony with popular feeling and therefore so respected. National organisation resting upon this basis of custom and traditional sentiment is the only kind that is really stable, that is not liable to be suddenly overthrown by internal upheavals or impacts from without. For it alone is rooted in the minds of all citizens in the forms of habit and sentiment." (*The Group Mind,* pp. 100, 145.)

I have said that the desire for political institutions of a type that is at once stable and benign has been characteristic of the English people ever since the date of Magna Charta; my reason for doing so is that—whether you call the famous document "a treaty between the King and his subjects" (Stubbs), "un compromis ou un pacte" (Boutmy), or "a legislative act, more or less of an institutional and exceptional nature" (McKechnie)—there we have the first organic expression of the will of the nation, born of the fusion

of Anglo-Saxon and Norman, that justice according to law should be conveniently and systematically administered in the realm of England. It symbolised the purpose of the time-spirit to correlate the Norman instinct for centralised government in the hands of the king with the Anglo-Saxon prepossession for popular rights—in other words, to set up in the commonwealth that had emerged from the blending of the two races a reign of law over king and people wherein Order would be the complement of Liberty. Tennyson makes one of his characters in *Harold* express a very profound constitutional truth of the time in a single phrase:—"The voice of England is the choice of England." It strengthens my confidence in the purpose of history when I realise that this is as true of the twentieth century as it was of the eleventh century. William the Conqueror had small liking for popular liberty as he found it in Saxon England—a thing so real and absolute as exercised by the Witan, that it elected and deposed kings—but he cared less for feudal anarchy. He saw how greatly his interest in checking the power of the barons could be served by declaring his adhesion to the old laws and the old polity. He felt himself quite equal to departing from both when occasion demanded—and he did, but that is another story. So we find him strengthening his right to the throne by the vote of a body claiming to be the Witan, swearing the ancient coronation oath, and receiving his crown from the same English prelate who had annointed the last of the Saxon kings. (Green *Hist. Engl. Peop.* i, 115; Taswell-Langmead, *Eng. Const. Hist.* c. ii.). Next we find him declaring that he would adhere to the law of the land as it stood in the days of Edward the Confessor with such additions as he himself made for the benefit of the English. Hence, so far as English law and polity are concerned the Norman Conquest did not mean the throwing away of what was worthy of permanence, but rather the conservation of it. Into the vessel of the new epoch was poured all that was vital in the old. Despite his opportunism, William's statesmanship in the eleventh century prepared the way for the wonderful constitutional achievements of the thirteenth. Without it we could hardly conceive of the charters of Henry I. and Stephen being granted in the twelfth century, containing, as they do, declarations that these monarchs had been respectively "elected" to the throne; nor do I believe that without it Magna Charta would have been won in the thirteenth century from John who had so degraded his election by the people as to surrender his kingdom to the Pope and become

his vassal. Cf. *Anglo-Saxon Chron.*, s.a. 1100; Feilden's *Short Const. Hist.* Eng., p. 8; Taswell-Langmead's *Eng. Const. Hist.* 7th Ed. c. vi.). It is the triumphant revival of the ancient power of the people to compel the king to govern according to law that makes the epoch in which it occurred of such absorbing interest to the student of English social history. The thirteenth century is not only a supremely important link in the general chain of historical continuity, but it is the bridge over which the interpreter of our modern constitution must pass in his search for its old-time origins. It was the age when England laid the foundations of a State that combines the political ideals of the two great civilisations of the past—the Liberty that was Greece and the Order that was Rome. From that combination has resulted Representative Government, England's peculiar contribution to civilisation in the large. And this State is unique, there is none like it in Europe to-day—although Cavour tried to make it the constitutional norm for Italy. It is a State in which the individual is free before the law, but in which the collective will governs. Nor does it bear any resemblance to the Hegelian conception of the perfect State, which the experience of one nation in our own time has shown to be portentously imperfect. Granting this we can cheerfully listen when Dr. J. N. Figgis observes: "The modern post-Reformation State *par excellence* is unitary, omnipotent and irresistable, and is found in perfection not in England." (*From Gerson to Grotius*, p. 15).

I know there are writers who echo the inextinguishable laughter of the gods over the attribution of any consciousness on the part of John and his barons of the momentous part they were playing on the political stage, and would have us believe that neither the king cared a fig for the maintenance of the rights of the Crown in the abstract, nor the barons for popular rights outside the ambit of their immediate concern. In fine, we are exhorted to regard the theory that Magna Charta was the result of a deliberate adventure of the collective mind upon state-craft as a "fond thing vainly invented." Probably it were wise to leave John out of the question, although his petulant enquiry: "Why do not the barons, with these unjust exactions, ask my kingdom?" connotes some understanding of the constitutional implications of such demands. Be that as it may, there is much to be found both in the language of the Charter itself and in the surrounding facts of the time which would lead to the conviction that at least one of those who were asserting the rights of the people had a fairly adequate conception that what was

being done would not lightly pass away with the pressure of the moment, but would stand as a permanent contribution to the principles of constitutional government. I speak of Archbishop Langton, who was not only the real leader of the barons, but who, if he did not draft the famous document with his own hand, was chiefly responsible for its framework. Langton was educated in the University of Paris when the revival of the study of jurisprudence in Europe was going strong. He became renowned there as a canonist. It is a present-day commonplace that out of the study of the Roman law, and its derivative the Canon law, in the Middle Ages grew our modern political theories. (Cf. Gierke, *Pol. Theories Mid. Age*, 1). Even in the twelfth century the scholars were disputing as to whether sovereignty, that is to say the supreme power in the community, was reposed in the king or the people. (Vinogradoff, *Rom. Law in Med. Eur.*, p. 58). Dr. Figgis, whom I have already quoted, makes the following observation upon the political value of the *Corpus Juris* to the medieval and Renaissance mind. "It became . . . right down to the beginning of modern politics, not so much a jurist's code, as a compendium of political philosophy, and could be appealed to at any moment as an argument. The very first condition for understanding the rise of modern politics is that of realising how Scripture, Aristotle, and the *Corpus Juris*, and above all this last, united to form the seed-plot of all political ideas." (*From Gerson to Grotius*, p. 226, n.) Hence, one may reasonably hold to the view that Langton brought to his patriotic endeavour a knowledge of civil government justifying the inference that what he was striving for was not a temporary victory for the disaffected barons over the king, but for stable measures of constitutional restraint upon the power of the Crown. Langton knew well what would happen to England if the will of the prince was to be the law of the land. He was mindful of what despotism tempered by anarchy meant in the reigns of Rufus and Stephen; nor did he forget the constitutional reforms that were won by the people in the reigns of the two Henrys.

When we turn to the text of the Charter itself for evidence that permanent constitutional reform was its purpose, we have that evidence in abundance. As is said by Pollock and Maitland (*Hist. Eng. Law* 2nd, Ed., p. 171): "Every one of its brief sentences is aimed at some different object, and is full of future law." It is not surprising, in view of the great part played by Archbishop Langton in obtaining the Charter, that its opening chapter declares that

"the English Church shall be free, and shall have her rights entire, and her liberties inviolate." The very fact that the title "Anglicana ecclesia," the "English Church," is used instead of the title "Holy Church" as employed in the earlier charters of Henry I., Stephen and Henry II., is eloquent of the birth of a national consciousness. It must be remembered that John was then a vassal of the Roman pontiff, and his acknowledgment of the freedom of the English Church extended not only to freedom from his own exactions, but from those of his lord-paramount as well. (Cf. McKechnie's *Magna Charta,* p. 192.) So that the concession of liberty to the English Church had a very important bearing on the civil liberties of the English people. It is equally true that advantage to the kingdom as a whole accrues from provisions in the Charter conceding what appear to be merely special or class privileges. I know that there are commentators on the Charter (e.g., Dr. McKechnie, op. cit., p. 464), who speak lightly of the democratic strain in its provisions, and disagree with early authorities, such as Coke, and more recent authorities like Stubbs, who think that chapter 60 is a recognition of the liberties of the whole mass of the nation in that it declares: "All these aforesaid customs and liberties, the observance of which we have granted in our Kingdom as far as pertains to us towards our men, shall be observed by all of our kingdom, as well clergy as laymen, as far as pertains to them towards their men." But what matter if the term "their men" (*suos*) in this chapter should be held to refer only to the sub-tenants of the king's feudatories? It is reasonably clear that the intendment of this provision in the Charter was to grant such liberties to all who were embraced in the term "freemen", as it was then understood, and that is enough for our purpose. How humble a person was included in the term appears by chapter 30, which protects the horses and carts "of any freeman" against forcible requisition for the king's use. Yet it would be a mistake to ignore the fact that at that period the lower classes had but a small place in political life. "Freeman" has been a word of ever widening meaning in the vocabulary of English politics. But the widening process has been slow. In Elizabeth's time we find Sir Thomas Smith in his *De Republica Anglorum* classifying "day labourers, poor husbandmen, merchants or retailers which have no free land, copyholders, and all artificers as tailors, shoemakers, carpenters, brickmakers, bricklayers, masons, etc.," as persons having no voice or authority in the commonwealth. But he generously, and withal quaintly,

adds: "They be not altogether neglected. For in cities and corporate towns for default of yeomen, inquests and juries are impanneled of such manner of people. And in villages they be commonly made church wardens, aleconners, and many times constables, which office toucheth more the commonwealth, and at first was not employed upon such low and base persons."

It is interesting in this connection to recall the provisions of 7th Henry IV., c. 15 (1406), which permitted not only all freeholders, but all *freemen,* present at the County Court on the day of an election of knights of the shire, to exercise the franchise. Now, this happened at the very beginning of our legislation respecting the electoral franchise, and it is of tremendous importance to him who delights to analyse the phenomena of the national or group mind. However, this untimely flower of democratic citizenship was found to encourage corrupt practices by the sheriffs, and it was ruthlessly rooted up some twenty-four years later by the 8th Henry VI, c. 7 (1430), which restricted the qualification of county electors to freeholders, and to such freeholders as possessed "free land or tenement to the value of forty shillings by the year at least, above all charges." Indeed, it was not until the nineteenth century was far spent that the landless man in England could be regarded as a citizen in the Aristotelian sense, i.e., one having a share in the ultimate sovereignty of the State.

All said and done, whatever else in the way of popular liberty Magna Charta achieved for us it indubitably set up the corner-stone of the foundation upon which the English theory of monarchy is erected. It denied the right of the king to impose financial burdens upon his feudal tenants without their consent, and so became the touch-stone in later days of those who denied the right of the king to impose taxation without the consent of Parliament. It enabled Bracton, a few years after the famous Parliament of Runnymede, to declare that the law was a bridle for the king and that his subjects could put the bridle on him when he needed it; it sustained the House of Lords three centuries later in advising Queen Elizabeth to marry for the welfare of the nation—a perilous adventure upon the temper of that imperious virgin; it emboldened Coke to warn the advocates of divine right in the reign of the first Charles that the sovereign power of the king was a term unknown to the English Parliament; and, lastly, it justified the deposition of that silliest of our kings, James II., and the election to the throne of the foreigner William of Orange and his wife Mary Stuart in 1689.

In view of all this I indulge the hope that you agree with me that the Great Charter of John symbolises at one and the same time the purpose of history, and the passion for Order and Liberty that marks the English collective mind. It avowedly came out of the past,it expressed the spirit of its age, it is a living force to-day. It was the morning star that ushered in the day of England's constitutionalism—the day of her greatness as a nation and as an imperial State. And so I think we may cordially endorse Bishop Stubbs when he says that the whole of the constitutional history of England is little more than a commentary on Magna Charta. (*Const. Hist.*, vol. 1, cap. xii.)

When my concern is with the relations of the Courts to the Commonwealth, or, as Raymond Poincaré puts it, "the social function accomplished by justice," you may regard my discussion of Magna Charta as savouring more or less of digression. But it is not so. Not only did Magna Charta expressly utilise judicature as a part of the constitutional mechanism of the State, but so far as its provisions are infused with popular liberty it caught this spirit from the democratic atmosphere that surrounded certain courts existing in England at the time of the Conquest, and continued, with some modification in their constitutions and jurisdictions, by the Conqueror and his immediate successors. These are known to constitutional writers as "local" courts, so designated because they depended upon custom and the consent of the parties for their authority in judicial proceedings and not upon any ordinance of the king or other source of legislation. They were not the "King's Courts" before the Conquest, and continued to be distinctive in this way until the people of Saxon origin themselves came to prefer Norman orderliness to their own looseness in the administration of justice. (Inderwick's *King's Peace*, pp. 42, 43; Pol. & Maitl. *Hist. Engl. Law* 2nd ed., p. 202.) The chief of these local courts were the Shire-moot, or County Court, and the Hundred-moot. It is unnecessary to discuss at length the constitution and procedure of these Courts, as there is now available to all interested a whole library of commentaries on the subject, popular as well as pontifical.

My purpose, will, therefore, be attained by simply quoting an illuminating passage from Dr. Hannis Taylor's *Origin and Growth of the English Constitution* (p. 202) :—"The courts of the shire and hundred were not only the judicial but the administrative workshops of the constitution. In addition to the administration of justice, these courts transacted such business as the levying of mili-

tary forces, the adjustment of local assessments, and the regulation of the system of police; and in their presence were performed all acts that required special publicity, such as the making of sales and the execution of important documents. These local courts, in which were discussed and settled nearly every question in which the body of the people were directly concerned, survived the shock of the Norman Conquest, preserving in their organisation and procedure the germs out of which the greatest of English institutions were to spring. Out of the representative principle inbedded in the courts of the shire and the hundred were developed, under the influence of Norman administrative ideas, the jury system, and the system of representative government." (See also Stubbs' *Sel. Charters,* 71,73; Feilden's *Short Const. Hist. of Eng.,* 4th Ed., pp. 70, 71.) Touching the principle of representation, there is no doubt that it was operative in a higher degree and was more constant in the local courts than in the national assembly. In the latter no matter what the theoretical right of the ordinary freeman was, he had no actual place there. Thus, in practice, the Witan was an aristocratical body, and it is to the local courts that we must properly look for the genesis of our representative institutions. (Cf. Taswell-Langmead, op. cit. pp. 24, 25.)

So much for the boon of popular liberty bequeathed to us by the local courts of the Anglo-Saxons. On the side of Order, however, they left much to be done for us by the Norman polity.

I have said that these local courts depended upon custom and consent of parties for their authority in judicial matters, consequently no party against whom judgment was given could have been constrained to obey it by any punitive process appertaining to the forum concerned. (Cf. Pollock's *Expansion of the Common Law,* pp. 145-6.) This lack of coercive authority in the local courts was a serious defect in the administration of justice before the Conquest, and it was aggravated by the policy of the State in confining the course of justice to popular channels and discouraging anything in the nature of appeals to the King or the National Assembly. (Cf. Hallam, *Mid. Ages* ii, p. 269; *Essays in Anglo-Saxon Law,* p. 25.) Furthermore, the orderly administration of justice in Saxon England was embarrassed and impeded by the large number of tribunals in existence other than the Shire-moot and the Hundred-moot, with concurrent, or private overlapping, jurisdictions. There were the Manorial Courts, the Court Leet, the Sheriff's Tourn, and certain courts ecclesiastical, over which the bishops pre-

sided. (Medley, *Eng. Cost. Hist.*, 5th ed., p. 601.) So that William the Conqueror would have been puzzled indeed to choose a proper forum in which to carry out his coronation oath to enforce the laws as they obtained in the time of Edward the Confessor—laws which are referred to in many charters and statutes as *bonae at approbatae antiquae leges Angliae.* Hence, reforms to effect order and method in administering justice were loudly called for in eleventh century England. Remedial measures in this direction were begun by William I., when he forbade bishops and archdeacons to hold ecclesiastical pleas in the local courts. But what was wanted was a consolidation of the courts, and uniformity of procedure. While the Witan was ostensibly continued under the name of the *Magnum Concilium*, it really became an assembly of the king's feudal vassals. (Freeman, *Norm. Cong.*, vol. 5, p. 277.) Its ancient powers, executive, judicial and legislative, were reduced to a shadow, and the royal authority became the vital and controlling force in the constitution. In these circumstances it was but natural that a smaller body, or standing committee, should be brought into being to assist the king in the work of administration. It was especially needed for the purposes of judicature. Following the model afforded by Normandy, William instituted one Supreme Court, known as the *Curia Regis*, or *Aula Regis*, wherein the king sat to administer justice in person, with the counsel and advice of the vassals of his household, and such other persons as he summoned on account of their knowledge of the law. In the absence of the king, the Court was presided over by the Justiciar, who was the king's lieutenant throughout the realm, and acted as viceroy when the kind was aboard. The *Curia Regis* discharged other functions than those purely judicial, but as a legal tribunal it had plenary civil and criminal jurisdiction, both original and appellate. As a court of first instance it took cognisance of all causes where the king's interests were affected, and of all suits between the Crown's tenants-in-chief. But until the reign of the first Angevin king, Henry II., it was not open to the plaints of the lesser vassals and the ordinary freemen of the realm. On the other hand as an appellate tribunal, with the king's consent witnessed by his writ, it could be resorted to by all those who failed to get justice in the local courts. (Cf. Stubbs, *Const. Hist.*, vol. 1, p. 391.) Henry, realising that the barons were using their feudal franchises to oust the jurisdiction of the local courts as well as that of the *Curia Regis*, corrected this disorder in a very effective way. He found

that his grandfather, Henry I., after he had thoroughly organised the Exchequer committee of the King's Court and appointed as its justices (known as Barons of the Exchequer), the ablest men in his kingdom, established a practice of sending certain of them in their official capacity down to the Shire-moots to speed up the collection of the revenue in the counties when the zeal of the sheriffs appeared to flag in this respect. Naturally when the sheriffs' accounts were investigated in the presence of the debtors, complaints of extortion arose loud and deep, and they had to be heard by the visiting justices. (Cf. McKenzie, *Magna Charta* 2nd, ed. p. 10.) Henry II. saw in this practice, if made permanent, something that would correct the poaching enterprises of the feudal courts, and at the same time give symmetry to the administration of justice in the kingdom. We therefore find that in the year 1176, the king began some constitutional house-cleaning on a very generous scale. All the counties in the realm were divided into six circuits, and three justices of the *Curia Regis* were assigned to hear pleas of the Crown in each of such districts. These *Justiciarii Itinerantes*, or Justices in Eyre, sitting in the Shire-moot or County Court, transformed it eventually into an assize branch of the *Curia Regis*, in which not only pleas of the Crown but suits between subject and subject were justiciable. The latter could be entered for trial by virtue of the king's writ, obtainable "at a price" during Henry's reign and those of his immediate successors—hence the prohibition in Magna Charta upon selling "right and justice." Some two years later (1178-9) Henry did not hesitate to reform the constitution and procedure of the *Curia Regis* itself in the interests of suitors of low degree. He empowered six of the justices of that august body to sit as a tribunal *ad audiendum clamores populi.* These six judges from the year 1179 sat *in banco;* but it seems that this was not the origin of the Court of King's Bench as we know it. Mr. Pike (*House of Lords*, p. 32), shows that the bench so established was rather the predecessor of the Court of Common Pleas. However, Henry II. not only made a royal Court out of the ancient County Court, but he threw open the doors of the distinctively Norman tribunal, the *Curia Regis*, to the "complaints of the people". Nor did he hesitate to take away the final appellate jurisdiction of the latter, and assign it to the body more immediately under his control, namely, the *Concilium Ordinarium*, or King's Council. (Cf. Taswell-Langmead, op. cit., p. 125; Ben-Abb. I., 207; Medley, op. cit. 102.) It is worthy of remark that the first three Henrys

in our list of kings were the founders of our modern system of judicature. We have already seen what the first two of them achieved in this way. Before the time of Henry III., Magna Charta had given fixity to legal business and cheapened royal justice by providing that "common pleas," or causes between subject and subject, should not follow the "court" (i.e., royal household), but should be holden in some certain place. (Chap. 17). The famous case of Richard of Annesty illustrates the awful experiences of suitors who had to wait upon the king's pleasure to hear their complaints. Annesty's own story of his legal pilgrimages will be found in Stephen's *History of the Criminal Law*, vol. i., p. 88. In his suit to recover possession of certain land he was obliged to follow the king's wake (and Henry II. being king, it was a hard wake to follow!) for some five years, visiting every place of note in England, and going abroad to Normandy, Aquitaine and Anjou. He ultimately succeeded in his suit, but before it was won he had spent all his money and was forced to borrow from the Jews at the modest rate of 86 2/3 per cent. What a story of the "law's delay" for some Dickens of the Middle Ages!

Although the last-mentioned provision of Magna Charta supplied the final measure of order and stability to the administration of justice that was needed at the time, it is reasonable to expect that all its implications in the way of giving distinctive jurisdictions to the three committees of the *Curia Regis* would not be realized at once. It was not until the reign of Henry III. that a regular Court of Common Bench was instituted. In 1235 Thomas de Muleton was appointed Chief Justice of the Common Bench, and thereafter personal actions ceased to be heard at first instance in the *Curia Regis* or in the Exchequer Court. It was in the Common Bench that the title of Chief Justice is first heard of, and it is hardly correct (*pace*, Lord Campbell!) to regard the Norman office of Chief Justiciar as an anticipation of it. That office was primarily an administrative one,—judicial duties falling upon it only in a secondary way. When the office of Chief Justiciar fell into disuse in the reign of Edward I.—it was not expressly abolished—its administrative powers devolved upon the Chancellor in his political capacity and not as the head of the Court of Chancery, because that court as a distinctive tribunal had its foundation a century later. A very practical side-light is thrown upon the difference between the two offices in the case of the first Chief Justice appointed to the Court of King's Bench in 1268. This was none other than Robert

de Brus, grandfather of Robert Bruce, King of Scotland. In his time the office of Chief Justiciar was yearly worth 1,000 marks—equal to £15,000 in English money to-day. He was one of the Justiciars, but when he accepted his new office, he found that his yearly salary was fixed at 100 marks. Tradition has it that he was a good lawyer; but without further information we might be rash in assuming that the politician was worth ten times as much to the State as the judge, in those days. (Cf. Inderwick's *King's Peace*, p. 80; Foss' *Judges*, vol. II., p. 155; and Campbell's *Lives of Chief Justices*, vol. I., p. 79.)

After this thorough organisation of the courts under the presidency of trained men, the king ceased to sit there as the dispenser of justice. James I. tried to revive the ancient right of the sovereign to sit as a judge in the King's Bench, but he was informed by the judges that he could not deliver an opinion.

And so, as the result of reforms begun by the first and completed by the third of the Henrys, when Edward I. came to the throne he found the *Curia Regis* faded into disuse, and its progeny the common law Courts of King's Bench, Common Bench and Exchequer, sitting in its stead in Westminster Hall. Its appellate jurisdiction, as we have seen had been taken over by the King's Council in Henry II.'s reign. It is a notable thing that while the *Curia Regis* was brought into being by the Conqueror as a means of strengthening the autocracy of the Crown and undermining the pre-Conquest system of popular government, it ceased to exist after Magna Charta had put a bridle on the king, and self-government had been restored to the people through the instrumentality of Parliament.

But the good that the *Curia Regis* did in its two hundred years of existence was much, and that good lives on for the healing of the nation. At its coming it found justice so dispensed in the commonwealth that Liberty was served at the expense of Order. By its means the ancient justice of the shire and of the folk—which had its origin in tribal insularity—was transformed into the justice of the nation; and the national peace became the "King's Peace," which is only a synonym for Public Order. (Cf. Pol. & Mait. *Hist. Engl. Law* 2nd ed., pp. 44, 45.) Furthermore, it was during the existence of the *Curia Regis* that the foundations of our modern Common Law were laid. And the Common Law is the symbol of the English concept of social justice as well as of the will to enforce it. It is true that the spirit of our Common Law is Teu-

tonic, and that there were laws and customs operative in England before the Norman Conquest; but these were sectional in their character and, in many cases, mutually repugnant. There were a Wessex law, a Mercian law, and a Dane law, but there was no Common Law of the land in that day. (Cf. Carter's *Hist. of Engl. Leg. Inst.*, 4th ed., p. 46.) The Common Law is, roughly speaking, a thousand years old; yet its "eye is not dim, nor its natural force abated." It is quick to meet the demands of changing conditions upon it, because it is uncoded. So long as it is kept fluid, the arteries of the body-politic through which it courses will never become hardened. Let me cite but one informing instance of the adaptibility of the Common Law to varying conditions as well as of its genius for safe-guarding the liberty of the subject. The case arose in the reign of Anne, some seven years before the fall of Port Royal to British arms. Under a resolution of the House of Commons existing at the time, the right of voting at an election for the borough of Aylesbury was enjoyed by all inhabitants not in receipt of alms. Ashby, an indigent person, had recently come to Aylesbury, but had been warned out of the parish by the Overseers of the Poor, and the Justices had ordered him to depart therefrom. At this juncture a general election took place, and Ashby's vote was refused by the constables of the borough because, not having contributed to the Church or the poor, he could not be regarded as a settled inhabitant. Ashby brought an action against one of the constables and obtained damages at the County Assizes. A motion was made in the Court of Queen's Bench in arrest of judgment on the ground that the action did not lie. The matter coming to the attention of the House of Commons, the House considered the interference of a court of law, in a question which concerned the right of election, as a breach of their privileges, and ordered all the parties concerned therein—counsel, attorneys, and others—to be taken into custody. Lord Chief Justice Holt was also ordered to attend the House, but he ignored the summons. The Speaker was directed to proceed with the mace to the Court of Queen's Bench and command his attendance upon the House. This being done, the Chief Justice is said to have replied: "Mr. Speaker, if you do not depart from this Court, I will commit you, though you had the whole House of Commons in your belly." The Queen was compelled to prorogue Parliament to put an end to the dispute. Lord Holt's view that the Common Law Courts had jurisdiction in such a case, which the House of Commons was bound to respect,

ultimately prevailed. In this way Parliamentary autocracy at the expense of the people was nipped in the bud. (Cf. Jennings' *Anecdotal Hist. of Br. Parliament,* 3rd ed., p. 46; 14 How *St. Tr.* 695.)

What the English Courts as a whole have done for the maintenance of constitutional Order and Liberty is writ large in the reports, covering a period of seven hundred years. These reports constitute a real history of the people during that period, and reference to them is an ever increasing habit of the students of sociology. It is quite unnecessary for me to enlarge upon what the Judicial Committee of the Privy Council has done in holding together the units of the empire for the past two centuries. You are familiar with it all. What the Judicial Committee has achieved in this respect is comparable only to what the Supreme Court of the United States—"the living voice of the Constitution," as it has been called—has done in checking tendencies toward disintegration in the American Union.

It is my hope that I have not wearied you by my extended survey of the origin and development of the Common Law Courts as part of the constitutional mechanism of the motherland. As I have said in effect before, to view the fact of the establishment in this country of a Court administering the English Common Law merely from the point of view of the antiquarian is not enough. Leopold von Ranke somewhere ventures to say that "facts without their philosophy are but barren and rigid chronicles." The philosophy of the founding of this Court in 1721 lies in the response it makes to the genetic tests of tradition and character. Viscount Bryce says: "What habits are to the individual man, that to a nation are its traditions. They are the remains of the Past turned into the standards of the Present." (*Hindrances to Good Citizenship,* p. 128.) And Bergson pertinently asks: "What are we, in fact what is our character, if not the condensation of the history that we have lived from our birth—nay, even before our birth, since we bring with us prenatal dispositions?" (*Evolution Créatrice,* c. 1), the "prenatal dispositions" of Governor Philipps's adventure in nation-building that we are celebrating to-day were those that inclined him to realise social order in the English way for the little community over which he was set. It is not fair to rob Governor Philipps of the true initiative in this matter by assuming that he was simply doing what he was directed to do. In this connection I will ask you to allow me to extract one or two passages from the official papers. It is true that it would

appear from the third volume of the "Nova Scotia Archives," p. 28, that he was expressly instructed "to make the lawes of Virginia a rule or pattern for this government where they can be applicable to the present circumstances." But the words I have quoted are really Philipps's own interpretation of the instructions for the information of his Council, and they imply more of a command than the language of the official document warrants as we find it in the second volume of the "Acts of the Privy Council," Colonial Series, p. 762. There we have it recorded that orders were given to the Secretary of the Lords Justices in Council, on the 25th June, 1719, "enclosing the Commission and instructions prepared for Colonel Philips (sic) and recommending that as these are not as extensive as those for other more populous plantations, he should have with him a copy of His Majesty's Instructions to the Governor of Virginia, which may be of use to him so far as they shall be Applicable to Cases that may happen, and are not sufficiently provided for by these Instructions, till His Majesty's further pleasure be known."

We find no positive command there to make the "lawes of Virginia a rule or pattern for this government," and certainly there is no direction to Philipps to create a "Supreme Court of Judicature". And so far as I know we must accept the record in the "Acts of the Privy Council" as authentic. But that is not all. Even in the very ample set of instructions given to Philipps, as Captain-General and Governor in Chief of the province, by Queen Caroline, as Guardian of the Kingdom, on 1st July, 1729, there is nothing specific as to erecting a court of judicature, or as to applying the "lawes of Virginia", or any other legal system. (See sec. 9 of these Instructions in Dominion Sessional Papers (1883), vol. 16, No. 12, p. 26). On the other hand, Philipps is required to advise both the king and the Commissioners for Trade and Plantations "what persons are proper and fit to be Judges, Justices or Sheriffs; and any other matter or thing, that may be of use to His Majesty in the establishing a Civil Government." (Sec. 10). And until such a Government was established, Philipps was to "conduct himself," till His Majesty's further pleasure was known, by the instructions given to the Governor of Virginia so far as applicable. Furthermore he was not to "enact any laws" till His Majesty had appointed an Assembly, and given him directions for proceeding therein. So that as late as 1729 Philipps had not been positively directed to set up such a measure of Civil Government as would

inhere in the operations of a Court of Judicature. Hence the question arises, are we not entitled to regard his establishment of the Court in 1721 as due to his own initiative impelled by his native instinct for social order, for Philipps was an Englishman born and bred? There is an incident germane to Philipps's action, but antedating it some five years in colonial annals, which shows that the time-spirit had moved other minds along the same direction. In the second volume of the "Nova Scotia Archives", pp. 28, 29, there is to be found an official communication from Major Caulfield (another Englishman, acting the while in Annapolis as deputy or lieutenant to Governor Nicholson) to the Board of Trade, bearing date the 16th May, 1716. This communication is interesting in two ways. First, we learn from it that Caulfield, there being no civil court of judicature in existence, undertook to adjudicate between parties at variance, founding his jurisdiction, in the manner of the Anglo-Saxon "local Courts", upon the consent of the parties. Secondly, it throws a useful side-light upon the character of General Francis Nicholson. When he learned that Caulfield was administering civil justice in this way, Nicholson sarcastically enquired of his deputy what commission he had giving him such authority. I quote Caulfield's reply, which must be counted unto him for righteousness:—"I answered that as I had the honour to command in the absence of the Governor I should always endeavour to cultivate as good an understanding amongst the people as possible, believing the same essential for His Majesty's service, and though I had no Commission for that effect, yet I held myself blameable to suffer injustice to be done before me without taking notice thereof, having never interposed farther than by the consent of both parties." Parenthetically, let me say here that after studying Nicholson's career with some care I am persuaded that he was one of the class of people the pessimist Schoperhauer had in mind when he observed that while there are many beautiful landscapes in the world, the human figures in them are poor and had better not be looked at. In short, Nicholson was a "rotter"; and not all the efforts of his apologists, such as J. A. Doyle (*English in America*, pp. 354, 433), can rebut the evidence of his ignoble conduct as it appears in the "Nova Scotia Archives" (vol. 2), and in the colonial records of New York, Virginia and Maryland.

To return again to Governor Philipps and his prime responsibility for the creation of the Court in question, let me refer you to a letter written by him to the Secretary of State shortly after the

event, in which he refers to it in this wise:—"In order to establish civil government, the Governor and Council have resolved themselves into a court to meet four times a year. The notion that martial law prevails here hinders settlers from coming into the country." (Nova Scotia Archives, vol. II., p. 76.) That communication seems to indicate clearly that Philipps was advising the British authorities that he had set up a measure of civil government off his own bat, and without waiting for directions from his superiors. Correlating it with the other facts I have noted, I feel reasonably confident in ascribing to Governor Philipps alone the credit of bringing into existence the tribunal of 1721. Constitutional lawyers may think that in the circumstances he had no authority for what he did. The official mind may regard him as over-bold. Be that as it may, we can justly apply to his conduct the saying of Emerson, namely, that "the charm of the best courages is that they are inventions, inspirations, flashes of genius."

Governor Richard Philipps in his day and generation served the purpose of history well. His sphere of action was a limited one, but who can doubt that his conduct, in setting up civil government in Nova Scotia in such measure as was possible at the time, materially helped to retain the province as a British possession during the troublous times that ensued before Halifax was founded in 1749?

The Court established in 1721 consisted of the Governor and the members of His Majesty's Council for the Province. It was to meet four times in the year, namely, in May, August, November and February. Its procedure was modelled upon the practice at the time prevailing in the General Court of Virginia, composed of the Governor and Council of that colony. (See "Nova Scotia Archives," vol. II., pp. 28, 29.) Mr. Justice Chisholm discusses in the articles I have mentioned some of the cases that came before the court during its existence in Annapolis Royal. After Halifax became the seat of Government for a short time judicature was carried on there by the Governor in Council, sitting as the General Court, and by a County Court framed upon the lines of the tribunal of that name then existing in Virginia. These two courts took cognizance of all matters, civil as well as criminal. In 1752 the County Court gave way to the Court of Common Pleas, and in 1754 the General Court yielded its jurisdiction to the Supreme Court with Chief Justice Belcher at its head.

By following the lead of Virginia, and making the Governor and Council her Supreme Court of Judicature, Nova Scotia, in the

early days we are considering, simply reproduced the *Curia Regis* of eleventh century England. Mark the continuity of history in that. Furthermore, by adopting the "lawes of Virginia" she was but taking the Common Law of England at second-hand. It is a commonplace that the colonists of the English plantations in America carried with them as a heritage so much of the Common Law as was suited to their new social life in a strange land. So closely has Virginia adhered to the law of the homeland that it was only during the past year that her courts ventured to rescind a rule laid down centuries ago in England, but which was found to work inequitably in the changed conditions of modern times. (*Whitaker* v. *Lane*, 6 V.L.R. 681.)

Just how much of the true Virginia strain marked the incunabula of Nova Scotia law it is not my purpose to discuss, for, after all, at this day, is it not rather from the point of view of racial traditions that we rejoice that Nova Scotia declared that Virginia should be her norm and model in the early part of the eighteenth century? Freeman (*The English People in its Three Homes*, p. 360) asserts that the constitutional history of the American colonies does not begin with the landing of the English in America in the seventeenth century, but with the landing of the English in Britain in the fifth century. This, of course, supports the view which, if not always articulate, is at least implicit in all I have said in this paper, namely, that the progress of a virile people along the pathway of its potential greatness the world over is a very real manifestation of the purpose of history. Virginia, in a far larger measure than the Northern Colonies, reproduced the early features of civil government in England. To illustrate this I cannot do better than quote again from Dr. Hannis Taylor (op. cit. vol. 1 pp. 21, 22). Recalling that Virginia began as a royal colony, and, after encountering many difficulties on the way, acquired the boon of representative government in 1619, he observes that down to this point her history "clearly illustrates how rapidly even a royal colony slipped from the actual grasp of the Crown, and how in its internal organization it involuntarily reproduced the outlines of the ancient constitution. As the basis of its local organization we find the hundred and the shire; in the colonial governor we have a reflected image of the kingship; in the royal council—the house of lords; in the house of burgesses—the house of commons. The foundation of the whole fabric was English law." Thus, whatever Nova Scotia obtained from Virginia in the way of government and law was thor-

oughly English in its essence and origin. How splendidly the people of Virginia in the seventeenth century responded to the English theory that neither kings nor governors are above the law appears in an incident noted by Hening, in his collection of the Statutes at Large of Virginia, Vol. 1, p. 146. It is serious enough in its bearings in all conscience, but yet has a very amusing side. It seems that Dr. John Pott, who, as Governor of the Colony, had busied himself particularly in establishing courts of justice, within a very short time after his retirement from office was himself arraigned for a criminal offence, and condemned. Oddly enough it appears to be the first record of a jury trial in Virginia. This is Hening's note: "July the 9th, 1630. Dr. John Pott, late Governor, arraigned and found guilty of stealing cattle, 13 jurors, 3 whereof councillors. This day spent in pleading; the next in unnecessary disputation: Pott endeavouring to prove Mr. Kingsmeal (one of the witnesses against him) a hypocrite, by a story of 'Gusman of Alfrach the Rogue.' In view of the irony of his case ex-Governor Pott may well have exclaimed with Omar—'Who *is* the Potter, pray, and who the Pot?' "

I have said that in celebrating this event we should endeavour to apprehend its pragmatic value for our own times. What lessons, then, shall we carry away from here? First and foremost, the recognition of our duty to see that the system of government we have inherited from the wise nation-builders of the past shall not be the sport of faddists and joy-riders to Utopia. We hear a great deal about Law and Order breaking down under the strain of the New Age—whatever that may mean. I do not think we are living in a New Age. Nietzsche says that man being once an ape, is still more of an ape to-day than any ape. True, there are signs of the coming of a better kind of international living than has prevailed under the law of the jungle tempered by diplomacy—and it is Canada's great privilege to be one of the heralds of that new dispensation. But who can say that in the narrower sphere of social life in English-speaking communities a New Age is upon us? What is there new in the revolt of the proletariate against the employers of labour? What is there new in the crank and the crook adding to the burdens of government in the time of their country's travail? We are simply going through a period when the march of civilization is temporarily halted by a relapse into class hatreds and consequent social unrest. It will pass. But that passing will not take place before the attainment of at least a measure of the

totality of the social and industrial reforms desiderated. It is always so. Heaven is not reached at a single bound, nor do I think that the best of all possible commonwealths will be set up in the earth during the present century. Before that comes Democracy will have to be spiritualized. That he who brings this to pass will save the civilized world is one of the unforgettable sayings of Mazzini. However, conceding this to be a period which favours the anarchist within our gates more than ever before, his bark is worse than his bite. But the very fact that his bark is vexing our peace should stimulate all good citizens of the British Commonwealth of States to take an active interest in maintaining their political constitutions in the wholeness and wholesomeness which marks them to-day. The constitution of the homeland is not perfect; but it is possible, judging from its operations during the past three centuries, that its limit of perfectibility has been reached. It may be that the "nose of wax," as Francis Place satirically called it, is not susceptible of further twisting. And if constitutions are shattered, what then? It is highly necessary, therefore, that the knees of our public spirit throughout the empire should not be allowed to sag. Slackness in this respect is more to be feared than all the propaganda that echoes the cry of Jack Cade's army: "The first thing we do let's kill all the lawyers!" Herbert Spencer truly says that "no philosopher's stone of a constitution can produce golden conduct from leaden instincts." Among Joubert's splendid sayings you will find nothing wiser or finer than this: "In all things let us have *justice*, and then we shall have enough liberty." And, lastly, Ihering sums up our duty to the State in words that burn even in translation: "Law and justice cannot thrive in a country simply because the judge sits always ready on the bench, and the agents of the police power are ever at its command. Every man who enjoys the blessings of the law should also contribute his share to maintain the power of the law and respect for the law. Every man is a born battler for the law in the interest of society." (*The Struggle for Law*, pp. 77, 78.

There is another lesson that we should carry with us of almost equal importance to the one I have just stated. That is the duty of deepening our sense of kinship with those who share with us the New World's heritage of English Order and Liberty. In that direction lies much assurance for our hope of the betterment of the conditions of international living alluded to a moment ago. The Right Honourable Lloyd George, in his speech of welcome to the

delegates to the Conference of Prime Ministers of the Overseas Dominions in London this year declared: "The future well-being of the world depends more upon the co-operation of Great Britain and America than upon anything else. An Anglo-American *entente cordiale* is the surest guarantee of future peace, which the world never more needed than it does to-day." This is the call of the mother to her over-long estranged children; and in Owen Wister's noble words we find the reason for the answer that America should give: "All the best we have—i.e., law, ethics, love of liberty —all of it comes from England, grew in England first, ripened from the seed of which we are merely one great harvest planted here by England." Canada can do no finer thing than to see that, so far as her assistance counts, this family reunion, with all that it means to a distracted world, will surely come to pass.

Next came this:

ADDRESS ON THE RELATIONS BETWEEN THE BRITISH DOMINION OF VIRGINIA AND THE DOMINION OF CANADA.

By Dr. J. Murray Clark, K.C., M.A., LL.B., *of Toronto, Canada.*

(Read by Mr. Angus MacMurchy, K.C., in Dr. Clark's absence.)

Mr. Chairman, Ladies and Gentlemen:

First I desire to thank the Nova Scotia Historical Society, the Historical Association of Annapolis Royal, and the Bench and Bar of Nova Scotia, for their invitation to participate in these memorable celebrations. I have been asked to bring to you the greetings of the Canadian Bar Association already expressed earlier in the day by our honoured President, Sir James Aikins.

Over two years ago my friend, the late Professor A. H. F. Lefroy, of the University of Toronto, urged me to support the efforts of our distinguished chairman, Mr. Justice Chisholm, who was then advocating the celebration of the 200th anniversary of the establishment of the first British Court of Judicature to sit in any part of what is now Canada. Professor Lefroy justly pointed out that a Court of Judicature was the symbol, indeed the very embodiment of "The Reign of Law"[1] which I had discussed in my Presidential Address to the Royal Canadian Institute—of which, by

[1]Transactions of Royal Canadian Institute, Vol. XII., p. 1.

the way, his father, the late Sir Henry Lefroy,[2] was one of the founders. And I should like to say here before passing on that Canada owes a greater debt than is generally known to both father and son for their contributions to the intellectual life of this country.

I come now to my main subject. In the minutes of the Council meeting called by His Excellency Richard Philipps, Governor of the Province of Nova Scotia, for April 19th, 1721, "to consider of establishing a Court of Judicature to be held for this Province" and adjourned until the next day, it was recited that the Governor had been directed (*Appendix a*) "by His Instructions[3] to make the "Lawes of Virginia"[4] the rule and pattern for this Government (where the same are applicable to the present circumstances until such time as the Government shall be settled upon a sure foundation according to the Lawes (*Appendix b*) of Great Britain)," and it was directed that a Court[5] as constituted should be held as specified, and that such Court should have the "Same Style and Cognizance of all matters and pleas brought before them and power to give Judgment and award—Execution thereupon, by the same manner of proceedings as the General Court so called of Governor and Council has in Virginia, and practices at this time."[6]

Let us glance for a moment at the beginnings of the Virginia whose "Lawes" your Governor of two hundred years ago was directed to follow.

The name "Virginia" was adopted in the spacious days of Queen Elizabeth: and Spencer, in his dedication to her of the *Fairie Queen*, includes among her titles that of "Queen of Virginia." The project was largely due to the energy, foresight, and patriotism of Sir Walter Raleigh, who, with all his faults, must be regarded as one of the greatest Englishmen. His career marks an epoch in our history, and following an eminent historian, we may regard the glorious Elizabethan era as extending for some years after her death, and not ending until the death of Raleigh, the last of the Elizabethan heroes, in 1618.

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[2]Transactions of Royal Canadian Institute, Vol. XII., p. 2.

[3]See article by C. E. A. Bedwell on Nova Scotia and Virginia, in "Landmark" of August, 1921, Vol. III., p. 515.

[4]Virginia Law Register, Vol. VI., N.S., June, 1920. See article by Colonel T. W. Shelton in 91 Central Law Journal, p. 262.

[5]Virginia Law Register, Feb., 1921. Dalhousie *Review*, April, 1921.

[6]Nova Scotia Archives, Vol. III., p. 28, *et seq.*

We must bear in mind that discovery and adventurous exploration had so widened their horizon that men could properly speak of a "new earth." Astronomical science, aided by the famous telescope of Galileo, had destroyed the system of Ptolemy, and demonstrated the more harmonious system of Copernicus; so that men could truly speak also of "new heavens." It was the age of the Gilberts, half brothers of Raleigh, one of whom originated the name, if not the science, of Electricity; and another, after claiming Newfoundland, our oldest colony, for his Queen, and so for the British Empire, cheered his drowning sailors by reminding them that Heaven was as near on sea as on land. It was the age of Bacon and of Harvey, the discoverer of the circulation of the blood; the age of Frobisher, Grenville, Cavendish, Hudson, Drake and Philip Sydney; of far-sighted statesmen, skilful diplomatists, such as Knollys, Walsingham and Randolph; and of learned lawyers, of whom I need mention only Coke. It was the age of Champlain, to the fruits of whose strenuous efforts the British Empire has become heir. Above all, it was the age of Shakespeare, the greatest creative genius that Europe has yet produced. In such a time was Virginia founded, the settlers (among whom were officers and men who had taken an honourable part in defeating the Invincible Armada) taking with them as a precious heritage the laws of England, which they developed in such admirable fashion that in the following century the "Lawes of Virginia" were followed in Nova Scotia.

It is worth while to recall that Raleigh thoroughly understood the principles of self-government, often erroneously described as modern. The word "nation" is now used with various and vague meanings. Raleigh used the word with a precise meaning when he expressed the belief that he would live to see Virginia become an "English nation." If it is not now an English nation, it is an influential part of a great English-speaking nation—the United States of America.

Perhaps at this stage one should at least partially answer the question raised in my lecture at Harvard University, namely, "Why the Lawes of Virginia?" The subject is a profoundly interesting, indeed fascinating one, but time will only permit a few words on it.

At a critical time, the agents of Virginia were able to show that Virginia had always been a convinced upholder of the monarchical form of Government, and that its General Assembly "had never passed a law in derogation of the royal prerogative." As long ago

as 1675, these agents made the following significant statements: "The New Englanders have obtained the power of choosing their Governor; but the Virginians would not have that power, but desire that their Governor may from time to time be appointed by the King. The New Englanders imagine great felicity in their form of Government, civil and ecclesiastic, under which they are trained up to disobedience to the Crown and the Church of England, but the Virginians would think themselves very unhappy to accept of and live under a government so constituted," etc.

Dr. Bruce, one of the ablest of the historians of Virginia, points out how closely Virginia approached the system of the Mother Country, and that not even the revolution could efface on our continent the mighty work which England had done through the growth of Virginia and the other American communities. He points out that her general principles of law and government, her standards of morality, her canons of literary taste, and her practical conservative spirit, have been too deeply stamped upon all those communities for a political revolution to diminish their influence, and he contends that American independence has really led to the most glorious of all England's triumphs. He points out that, as a separate nationality, "the United States has drawn a very large proportion of its citizens from the various countries situate on the European continent, and differing very radically in the character of these peoples." Transferred to America, these immigrants were destined to see their children grow up almost as deeply affected by the spirit of the fundamental institutions of England, as represented in the general framework of the American system, as if they were of the purest Anglo-Saxon stock." His conclusion is well worth quoting: "From this point of view, the foundation of Jamestown is the greatest of all events in the modern history of the Anglo-Saxon race and one of the greatest in the history of the world. From this point of view also the conditions prevailing in colonial Virginia—the foremost and most powerful of all the British dependencies of that day, and the one which adopted the English principles and ideas most thoroughly and was most successful in assimilating them, becomes of supreme interest; for from these conditions was to spring the characteristic spirit of one of the greatest modern nationalities; and from these conditions was to arise a permanent guarantee that, whatever might be the fate of England herself, the Anglo-Saxon conception of social order, politi-

cal freedom, individual liberty, and private morality, should not perish from the face of the earth."

Notwithstanding the present disturbances, I have great faith in "our crowned republic's crowning common sense," but many besides this Virginian Historian have, at various times, despaired of "the fate of England." Carlyle[7], writing in 1829, said "how often have we heard, for the last fifty years, that the country was wrecked and fast sinking; whereas up to this date the country is entire and afloat." And again, day by day, in all manner of periodical and perennial publications, the most lugubrious predictions are sent forth." For reasons I shall shortly indicate, we can in 1921 say what Carlyle said fourteen years after Waterloo, "Time and the hours will bring relief to all parties."

A time came in the course of English History when policy was formed on the stupid advice of men like North, while the statesmanlike advice of men like Chatham and Burke was overruled; with the disastrous result that the connection between Virginia and the Mother Country was interrupted. Some Virginians thought that all the grievances could be remedied without severing the connection; and, not counting the tremendous sacrifices involved, determined to remain British, and to spend their lives and bring up their children under the flag of their fathers, which is still the flag of Canada. The Virginians and other United Empire Loyalists have had a powerful influence in the development of Canada which there is not time to detail. It is, however, pertinent to remark that while Ontario adopted its town and township system from England, it derived its county system from Virginia. As administered in Virginia, the county system contained the germ of the federal principle, which is undoubtedly the greatest contribution of the United States to Political Science. The federal principle was discussed by the Greeks several thousand years ago and subsequently by others, but it may be correctly said that it was first put into successful practical operation in the great country to the south of us, and that by its adoption in Canada and elsewhere the unity of the British Empire has been preserved. Further, in my humble opinion, it is by the extension of the federal principle that the permanent integrity of our Empire, which stands for liberty and justice, and is the greatest force for peace yet developed, will be permanently maintained.

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[7]"Signs of the Times."

If further proof is necessary to show that Virginia was a potent factor in developing and enunciating the federal principle, I need only refer to the work of Chief Justice Marshall, one of the great sons of Virginia, who was not only a famous Jurist but a far-sighted Statesman.

The first Parliament of Upper Canada (now Ontario) which met in pursuance of the Imperial Statute of 1791 (known as the Constitutional Act), at Newark (now Niagara), enacted that in all matters of property and civil rights resort should be had to the laws of England (as they stood on the 15th October, 1792). This must be qualified by the important exception, not expressed by the Legislature but implied by the Courts, of such English laws as are clearly not applicable to the state of things existing in the Province. The principle was well stated by Chief Justice Sir John Beverley Robinson, to whom I shall presently refer. That first Parliament also provided for appeals to His Majesty in Council. The appeal is now to the Judicial Committee of the Privy Council, which has rendered, and will, I hope, continue to render signal service not only to Canada and the Empire, but also to the whole civilized world. That august tribunal has not only to deal with the Common Law of England, brought from England to Virginia and via Virginia to Nova Scotia, but with many other systems of law, such as the Civil Law in force in Quebec, the Roman Dutch Law in parts of South Africa, and many other laws. This illustrates the genius of the British Empire, whose unity is not based on a dull and deadly uniformity, but is enriched by a most diversified variety. Those who brought to Ontario the noble traditions of British Virginia took their due part in passing this wise legislation of the Parliament of 1792, and their descendants are still influential in maintaining British traditions.

The first educationalist in the Province of Ontario, indeed at one time the only educationalist, was the Reverend Dr. John Stuart, a grandson of Governor Dinwiddie of Virginia. He had a good deal to do with the training of two Chief Justices—Chief Justice Stuart of Quebec, and Sir John Beverley Robinson, the first Chief Justice of the Ontario Court of Appeal (*Appendix c*) who referred to Dr. Stuart as his spiritual father. Professor A. H. Young, of the University of Toronto, has rendered good service by making scholarly investigations of the records of Dr. Stuart, many of whose descendants, including Sir Campbell Stuart, did splendid work in the Great War. Men of science are busy investigating the begin-

nings of civilization. Much more important, it seems to me, is it to study the beginnings of the history of our own country.[8]

Sir John Beverley Robinson was the son of a lawyer born and educated in Virginia (*Appendix d*). He became Attorney-General when he was twenty-one, but after achieving this distinction, decided to study law in London, and Lincoln's Inn. So that it can be truly said that he brought to the administration of justice in Ontario the traditions of Virginia as well as the traditions of the English Courts. He acted as Chief Justice for 33 years. It is recorded that in the first 24 years of this long period only five of his decisions were questioned by appeal to the Judicial Committee of the Privy Council, and in every case the judgment of Chief Justice Robinson was sustained (*Appendix e*). His decisions as published in our Law Reports are indeed enduring monuments of his learning, legal acumen, and sound judgment.

What has happened to the Common Law since it was brought from England to Virginia, and via Virginia to Nova Scotia, constitutes, I think, a solid ground for sane optimism as to the future. For "our Lady the Common Law" now rules in all of the United States except Louisiana, and in all of Canada except Quebec.

In considering the significance of this it is well to bear in mind the statement of Savigny that "law must be regarded as a product of the entire history of a people. It is not a thing that can be made at will or ever has been so made; it is an organic growth which comes into being by virtue of an inward necessity, and continues to develop in the same way from within by the operation of natural forces." Part of the laws so brought to Virginia were the principles of the Great Charter, which are the common heritage of England, Canada and the United States. To this is largely due the important, indeed unique, fact that along the three thousand miles of boundary between the United States of America and Canada there has been uninterrupted peace for over a hundred years. For a part of these hundred years all was not Canadian boundary, as a hundred years ago Canada consisted of Lower Canada, now Quebec, and Upper Canada, now Ontario; but wherever the boundary was from time to time, it was always during the whole century British boundary. As it is their common glory, the British Empire and the United States are therefore fully justified in pointing the war-weary and war-sick nations to the hundred years of peace along the whole of the three thousand miles of the Canadian boundary

[8]Bryce in "United Empire," Vol. XII., N.S., p. 566 (August, 1921).

as an object lesson for study and imitation. Canadians understand the people of the United States better than the people of the Mother Country do, and should therefore be the interpreters of the United States to the British Empire, and for similar reasons, the interpreters of the British Empire to the United States. We should play a worthy part in preventing misunderstanding, in preserving the peace along the international boundary for the next thousand years, and in maintaining the solidarity of the English-speaking peoples. It is manifestly plain that in the near future all of the combined resources of the British Empire and the United States will be needed to defend and maintain our common ideals.

Of course, in considering this development, we must take into account the legislation of various bodies having jurisdiction. In the United States, in five years, over 62,000 statutes were passed and, notwithstanding this mass of legislation characterized by a critic in the United States as the "Rain of Law,"[9] the virile vitality of the Common Law is such that, according to a competent authority, over ninety per cent. of the important disputes in the United States are still decided by the principles of the Common Law. It is to be remembered that the consequences of legislation are determined by natural laws whose operation is as inexorable as the laws of chemistry or physics. It is by reason of this fortunate fact that legislation is so often futile. It is well known, for instance, that all laws to lower the rate of interest have invariably and inevitably resulted in an increase in the rate of interest. Bryce gives another striking instance when he points out that the provisions for the election of judges and officials in the United States were enacted professedly to give effect to the sovereignty of the people, but had the opposite effect—namely, to increase the power of the "bosses" who largely control the elections for their own selfish ends. We talk somewhat inaccurately about a "body politic," but, without pressing the analogy too far, we may correctly say that a statute is as important for the community as a surgical operation upon the person of a citizen. If such an operation is performed by a person without an accurate knowledge of anatomy the results are likely to be disastrous. It is quite as absurd to expect legislators to pass wise laws without any adequate knowledge of social science, or even of the principles of legislation, as it would be to expect a blacksmith because he is honest and popular, to operate successfully for ap-

[9] *Atlantic Monthly*, Vol. 114, p. 107, 1914.

pendicitis; and the fact that the operator may profess the most humanitarian motives, and may be an effective "vote-getter," will not alter the result. Nor will good intentions prevent an ill-considered statute passed without regard to the fundamental facts of human nature and in violation of the inalienable human right to liberty—doing michief; indeed, the history of legislation contains many striking illustrations of the shrewd French saying "that the lower regions are paved with good intentions."

Many forget the true saying of Bacon: "For the chain of causes cannot by any force be loosed or broken, nor can nature be commanded except by being obeyed." This is the true explanation of the fact that there is so much disappointment and disillusionment as to the effects of legislation. The late Principal Denney well said: "It is just as needful to say 'Put not your trust in Parliament,' as 'Put not your trust in princes.' " We forget that though we talk about the sovereignty of parliaments, no parliament can break a single link in the chain of cause and effect, and while parliaments may ignore and disregard the fundamental distinction between right and wrong, they cannot evade or prevent the inevitable consequences of their statutes in accordance with economic and other laws, over which legislatures have and can have no control. This explanation is well expressed by the concluding lines of the remarkable book by T. R. Glover, the Public Orator of Cambridge, entitled "From Pericles to Philip," as follows:

> "And the end men looked for cometh not,
> And a path is there where no man thought;
> So hath it fallen here."

I do not for a moment underestimate the vital importance of Statute Law. In some instances good may really be done by carefully drawn Statutes especially where the legislators know thoroughly the law they propose to amend and the reasons therefor, its history and the forces at work in relation thereto, when the legislators completely understand the defects it is desired to remedy and the effect of the suggested remedy, and also appreciate the evils that are certain to result from the proposed legislation, for, human nature being what it is, legislation usually results in mischief. As in the case of some few surgical operations on private individuals, there may be a preponderance of good over the evil done by the enacting of statutes which are wise, carefully considered, and skilfully drawn.

In a very notable case, Taylor Horde (1757) 1 Burr 60, Lord Chief Justice Mansfield said at page 108: "But the Statute (18 Edward I.) *Quia Emptores Terrarum,* which took away subinfendations and gave free liberty of alienation—and other statutes—the frequent releases of feudal services; the statute of uses and of wills; and at last the total abolition of all military tenures; have left us little but the names of 'feoffment,' 'seisin,' 'tenure' and 'freehold'; without any precise knowledge of the thing originally signified by these sounds."

Later, Chief Justice Mansfield does refer to "the sense of wise men and the general bent of the people in this country," and "public utility"; but justly gives the main credit for the reforms he describes to legislative activity; and these reforms substantially amount to the abolition of the feudal system. It is particularly desired to emphasize that the process was a gradual one, extending from the reign of Edward I., the English Justinian, down to the middle of the eighteenth century, five hundred years; and also that the reform had been achieved in England before 1757, the date of Lord Mansfield's judgment, and some years before the American Revolution.

Some fear that the development of the Common Law will be thwarted by unwise legislation, checked by the arbitrary power of bureaucracy, and overwhelmed by "mobocracy," for we must never forget that "the worst thing in the world is ignorance in motion." To cast out this base fear, we have only to remember that the Common Law is founded on liberty, justice, and truth, which are mighty and will again prevail.

We are apt, however, to disregard the warning of Shakespeare, that the "insolence of office" is one of the most grievous ills to which "flesh is heir," and to overlook his other statement, based equally on his profound knowledge of human nature that, when vested with arbitrary powers, the typical official,

> "Drest in a little brief authority
> Most ignorant of what he's most assur'd
> . . . . . .
> Plays such fantastic tricks before high heaven
> As make the angels weep."

Our fathers abolished one Star-Chamber. This generation, disregarding the abhorrence of the Common Law for arbitrary power,

is establishing many Star-Chambers. When they become too oppressive, as most certainly they will, our children or our grandchildren can abolish them.

For we must never forget that "our Lady the Common Law" is sagacious, tolerant and patient, and knows well the frailties of human nature, and that the penetrating question of the Romans, *Quis custodiet ipsos custodes?* (who will keep the keepers?) has not yet been satisfactorily answered. Therefore law must ever be regarded as the main safeguard of democracy, or, to quote the phrase of President Harding, "the bed-rock of democracy."

History demonstrates that uncontrolled, irresponsible power, such as it is now the fashion to vest in commissions and officials, will in the long run most certainly be abused. Knowing this, one of the great men of the United States said they would establish a government of laws, not of men. He is the more to be applauded because the idea was not new. Thousands of years before, Solon, who is justly described as the "most profound political genius of antiquity" had said, "It is the essence of democracy to obey no master but the law."

In his great book on Modern Democracies, Lord Bryce justly observes that, "The two safeguards on which democracy must rely are law and opinion."

I have already said all that time will permit about law as a safeguard of democracy, but on this head desire to quote the warning of that great pro-Virginian English statesman, the immortal Irishman, Edmund Burke, which cannot be too often reiterated[10] or too strongly emphasized. He said:

> "Liberty to be enjoyed must be limited by law; for where law ends there tyranny begins; and the tyranny is the same, be it the tyranny of a monarch or of a multitude; nay, the tyranny of the multitude may be the greater, since it is multiplied tyranny."

Opinion, to be of any value as a safeguard of democracy, must be the result of clear thinking about accurate information. Hence celebrations such as these in which we are taking part are useful in safeguarding democracy—making democracy safe for the world.

In the early days of Virginia a form of socialism now advocated in Canada, England, the United States, and elsewhere, was tried, resulting in starvation, in the "starving year," referred to in local

[10]"The Reign of Law," 84 Central Law Journal, p. 382. See also Virginia Law Register, June, 1920. Transactions of Royal Canadian Institute, Vol. XII., p. 14.

histories. It seems to me important that full information about the Virginia Experiment of Socialism should be made public, or at any rate available for every student. Much information is already available, but I shall only take time to read a few lines from an interesting report by Ralph Hamor and John Rolph, made at the time. They are competent witnesses, and say, "When our people were fed out of the common store, and laboured jointly together, glad was he who could slip from his labour or slumber over his taske he cared not how, nay, the most honest among them would hardly take so much true paines in a weeke as now for themselves they will doe in a day; neither cared they for the increase, presuming that howsoever the harvest prospered the generall store must maintaine them so that wee reaped not so much Corne from the labours of thirtie as three or foure doe provide for themselves."[11]

Some scholars contend that in *The Tempest*, one of the greatest of his plays, Shakespeare discusses the Virginia Experiment of Socialism (*Appendix f*). Whether this is so or not, Gonzalo, in *The Tempest*, is made to state the essential basis of socialism and communism in the words:

". . . for no kind of profit
Would I admit."

This reference to the elimination of profit indicates the vital importance of a complete scientific investigation of the Virginia Experiment[12] of Socialism, because profit is an absolutely essential attribute of property; and if you eliminate profit you destroy property, that is, the institution of private property. Now the prohibition "Thou shalt not steal" involves the existence of property; consequently, if you eliminate profit and abolish property you abrogate the Eighth Commandment. If it is remembered that the moral law is one and indivisible, it will be seen that by eliminating profit you necessarily abrogate the whole moral law. Similarly, reason demonstrates that socialism is an enemy of marriage and the family. The spread of false socialistic doctrine is undoubtedly the cause of the sinister development referred to by an English judge when he said, in 1920, that "marriage with many people appeared to be nothing but a necessary preliminary step to being divorced." Sociologists have pointed out how frequent divorce is among sav-

[11] *Narratives of Early Virginia*, by Taylor.
[12] "United Empire," Vol. XIII., N.S., p. 568. Journal of Canadian Bankers' Association, October, 1920.

ages. The importance of this is indicated by the pregnant observation of F. H. Giddings:[13]

> "There is no cure for degeneration but in a pure and sane family life, which disciplines the welcome and untainted child in the robust virtue of self-control, and in an unswerving allegiance to duty."

When the system now advocated was discussed by the Greeks more than two thousand years ago, Aristophanes (as translated by Rogers), pointed out the logical consequence in the lines:

> "All women and men will be common and free
> No marriage or other restraint will there be."

It is equally plain that if you eliminate profit, and destroy the institution of private property, you destroy liberty and all true freedom, for no man is really free who is denied the right lawfully to acquire, hold, and enjoy private property.[14]

Indeed, the French Socialists were at least logical when they advocated that God should be eliminated, and that the idea of the hypothesis of God should be "expelled from human brains." Karl Marx said that "The idea of God is the keystone of a perverted civilization. It must be destroyed." Unfortunately Karl Marx has many followers even in Canada, England, and the United States. His system was put to the test by Lenin and Trotzky in Russia. According to the laws of human nature, as described by the master mind of Shakespeare in *Troilus and Cressida*, the system was destined to produce the "universal wolf," which, if not destroyed, will destroy Russia. Already millions have perished from starvation, caused by socialism, or perhaps one should say communism, put into practice. This was among the Slavs, whom many regard as one of the lesser breeds without the law, though at a large meeting in one of our Canadian cities during the present month, an orator was loudly applauded when he appealed to his fellow communists "to unite now and fight until Sovietism was firmly established in Canada as it was in Russia. It is therefore important to remember that communism was tried by Englishmen in Virginia, and recently by Australians and Englishmen in New Australia, and that in these, as in all other cases, communism resulted in starvation (*Appendix g*).

[13] "The Principles of Sociology," p. 352.

[14] As to the constitutional security for property, see Journal of Canadian Bankers' Association, January, 1919. This article is referred to in Bryce, Modern Democracies, Vol. I., p. 483.

In Canada, and even more in England and the United States, where industry is much more complicated, and population denser than it was in the early days of Virginia, the starvation would be much more appalling—much more terrible than even in Russia.

Though the Virginia Loyalists came to Canada more than a century and a half after the "starving years," they probably had a vivid knowledge that communism and starvation stood in the relation of cause and effect, and it is common knowledge that few if any of them—or for that part of their descendants—have been led astray by the fallacies which since the days of Plato have been periodically advocated.

A Greek scholar recently proved that most of the fallacies now being advocated, and causing extensive mischief in Canada, England, and the United States, had been put into the mouths of demagogues by Aristophanes. The demagogues and sophists caused the destruction of the Athenian Commonwealth, but their fallacies will, in both the British Empire and the United States, be defeated by the enlightenment of public opinion. In this illumination, "the gladsome light of Jurisprudence" will be a potent factor. When concluding his lectures to the Law Schools of the United States, Sir Frederick Pollock, her most learned Knight, nobly said:

> "Remember that our Lady the Common Law is not a task-mistress, but a bountiful sovereign whose service is freedom. The destinies of the English-speaking world are bound up with her fortunes and her migrations, and its conquests are justified by her works."

While one, as in duty bound, praises "our Lady the Common Law," yet I would not utter one word of criticism or disparagement of the Civil Law which is undoubtedly one of the greatest achievements of the human intellect. It must be remembered that the Civil Law rules not only in France, Scotland, and on the banks of the St. Lawrence, but elsewhere over millions, tens of millions, of men, and in all cases not by reason of imperial power, but by the imperial power of reason, if one may once again so paraphrase the famous saying of Portalis:

"Non ratione imperii, sed imperio rationis."

Truly peace hath her victories no less renowned than War, and Napoleon's Code will be remembered, and in some places reverenced and obeyed, long after his battles are frogotten.

In the fullness of time the day came when Virginia as part of the United States, and Canada as part of the British Empire, fought

under the great Frenchman, Field Marshal Foch, in a common cause. The sons of Canada and Virginia were tested in the fiery trials of the Great War, and proved faithful and true to the highest ideals. Many of the sons of Canada and Virginia, yea, and of the sons of all parts of the British Empire and the United States and of our Allies, gladly laid down their bright young lives, "their fairest gift of a lover's devotion," to the sacred cause of liberty. Of them we may use the immortal words of Pericles, spoken long years ago in praise of the fallen heroes of Athens:

"But each one, man by man, has won imperishable praise, each has gained a glorious grave—not that sepulchre of earth wherein they lie, but the living tomb of everlasting remembrance wherein their glory is enshrined, remembrance that will live on the lips, that will blossom in the deeds of their countrymen the world over. For the whole earth is the sepulchre of heroes; monuments may rise and tablets be set up to them in their own land; but on far-off shores there is an abiding memorial that no pen or chisel has traced; it is graven, not on stone or brass, but on the living heart of humanity. Take these men, then, for your ensamples. Like them, remember that prosperity can be only for the free, that freedom is the sure possession of those alone who have courage to defend it."

Without stinting our admiration and love for noble France, we can say, indeed we must say, that the world's best hopes rest upon the solidarity and co-operation of the English-speaking peoples. The United States and the British Empire will, in the future, we may confidently hope, render nobler and still more noble service to the cause of Liberty, Justice, Peace and Civilization, to Learning, by which alone Democracy can be saved from its pernicious, nay, its deadly enemies, the demagogues; to Science, which knows no national boundaries; and to Humanity, which is above all nations.

APPENDIX

(*a*) As to whether Governor Philipps acted on instructions or on his own initiative, C. E. A. Bedwell, Librarian of the Middle Temple, says in the article cited above:

> "It is important to observe that the choice was not made by Governor Philipps, but was contained in a Document issued by the authority of the Privy Council under date June 25, 1719. The original is in the Public Record Office. . . . ."

A few days after the establishment of the Court referred to, on the 19th and 20th of April, 1721, Governor Philipps, writing to the Board of Ordinance in London, reported the establishment of this Court. The original letter

does not seem to be now available, but Bedwell shows from published extracts that "the Governor regarded the establishment of the Court as being conformable to his instructions, which referred him to "the lawes and rules of Virginia" as a rule or pattern for the Government of Nova Scotia so far as they were applicable to the circumstances."

The only comment necessary is that Bedwell speaks of the scholarly and painstaking examination of the original sources of information.

(*b*) That this was carried out is shown by the statement of Haliburton quoted by Bedwell in his article cited above

(*c*) Ontario was then known as Upper Canada, and the Court referred to as the "Court of Error and Appeal." Before his appointment as Chief Justice (or President) of this Court Robinson had been Chief Justice of Upper Canada from 1829 to 1862.

(*d*) Christopher Robinson, the father of Chief Justice Robinson, was educated at the William and Mary College, Virginia, which the Chief Justice visited in 1851. According to his son and Biographer, General C. W. Robinson, "his ancestor had been a Trustee under the original Charter of 1693." The Chief Justice was a correspondent of Mr. Conway Robinson, described by General Robinson as "a leading member of the bar and Chairman of the Executive Committee of the Virginia Historical Society."

(*e*) Life of Sir John Beverley Robinson, Bart., by Major-General C. W. Robinson, C.B.

(*f*) Gayley's "Shakespeare and the Founders of Liberty in America."

(*g*) Old Virginia and Her Neighbors, by John Fiske. See chapter on "The Starving Time," Vol. I., p. 119, et seq.

Note that important documents, letters, etc., have been discovered since the publication of this book.

Mr. John Irvin, K.C., of Bridgetown, had also prepared a paper, but owing to the lateness of the hour when his turn came he did not read it. His subject was "A Philosophic Examination of the Spirit of Nova Scotia's first Criminal Laws", and we are glad to know that the paper is to appear shortly in pamphlet form.

At the close of the proceedings a vote of thanks to the chairman and to writers and readers of papers, the Town Band, Daughters of the Empire, and all who contributed to the success of the occasion was carried unanimously, on motion of Mr. Justice Longley, seconded by Mr. L. M. Fortier. A vote of thanks to Mr. Fortier was also moved by Major J. Plimsoll Edwards, seconded by Dr. Augustus Robinson and duly carried, after which the meeting sang God Save the King and dispersed.

Next morning, Thursday, September 1st, some visitors were entertained by the Honorary President and Mrs. Harris at their country house, Mount Clement; others were given motor drives, and about eighty-five inspected the museum in the Fort, being received there by the honorary superintendent and three volunteer guides, Rev. C. A. Munro and Messrs. A. M. King and Kenneth Harris.

And so, as we hope, the time went pleasantly for all until noon on Thursday, when the trains, east and west, carried off most of our guests, others leaving by automobile, and a few prolonging their stay.

Our celebration was over, and the verdict upon it was perhaps best expressed by the following editorial in next day's Halifax Morning Chronicle:—

A Great Occasion.

"Three inspiriting chapters in the story of Nova Scotia were vividly recalled and three notable events in the life of our Province fittingly commemorated at Annapolis Royal yesterday. It was a great day, a memorable occasion, and it was well and worthily signalised. The ceremony was simple and dignified. The setting for it, in the ancient fort, so long and often the sport of rival forces, was ideal, historically and scenically. The assembled company was representative not alone of Nova Scotia, but of all Canada, and the messages of the Lord Chancellor of England and the Chief Justice of the United States brought the English-speaking world in communion with the gathering there to celebrate 'the birth of an idea,' to commemorate the genesis of the reign of the Common Law of England overseas and to honour the literary fame of a brilliant Nova Scotian. Men of note and distinction in public life, in jurisprudence and in literature stressed the significance of these anniversary events and united in bearing testimony to the beneficent gifts which Nova Scotia in these three hundred years has made to the nation and to the development of the British Commonwealth. The programme was admirably conceived and admirably carried out, and all who were associated with the celebration deserve to be highly complimented upon its splendid success."

Societies represented at the Historical Celebration at Annapolis Royal, August 31st, 1921:—

The Royal Society of Canada; Canadian Bar Association; Historic Landmarks Association of Canada; Women's Canadian Historical Society of Ottawa; Nova Scotia Historical Society; New Brunswick Historical Society; Historical Association of Annapolis Royal; Haliburton Club, Windsor, N.S.; Barristers' Society of Nova Scotia; Law Society of Upper Canada. The Ontario Government also named Col. Alex. Fraser as its special representative.

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ANNOUNCEMENT.

All remaining copies of the Calnek-Savary History of Annapolis are now deposited in Fort Anne, for sale, for the combined benefit of the Savary Estate and the Historical Association of Annapolis Royal.

The work is in two volumes, cloth bound, and fully illustrated, and the price per set $2.50, postage extra.

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