

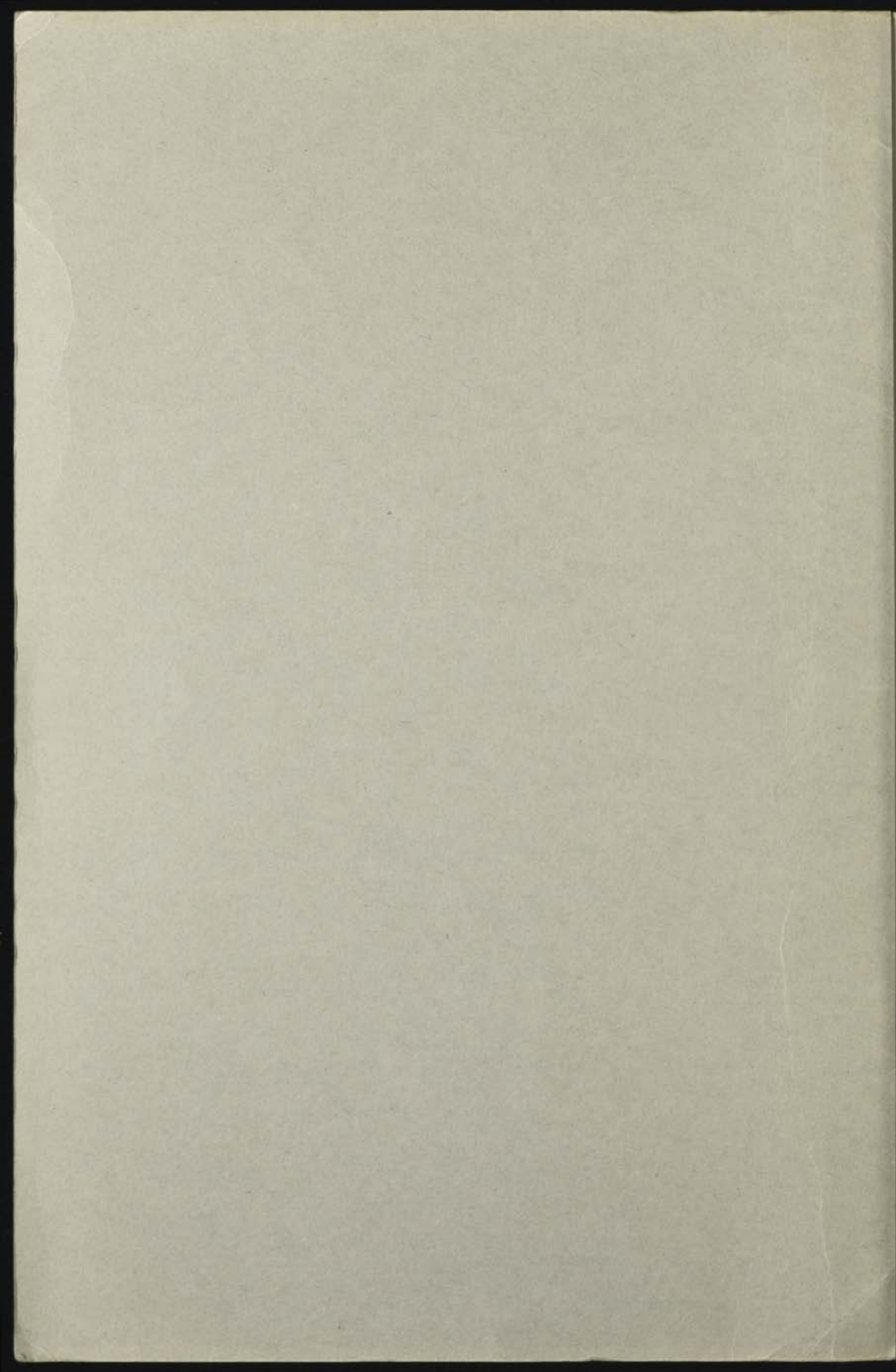
DUNCAN & JOHN GRAY MEMORIAL LECTURE

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CANADIANS

THE RIGHT HONOURABLE
THIBAUDEAU RINFRET

Chief Justice of Canada

THE UNIVERSITY OF TORONTO



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In publishing the Duncan and John Gray Memorial Lecture of 1951, we of the University of Toronto pay a grateful tribute to the fifth distinguished French-speaking Canadian who has lectured on this foundation. The Duncan and John Gray Memorial Lectureship was inaugurated in 1947 by the Right Honourable Louis St. Laurent, who was at that time Secretary of State for External Affairs. Succeeding Lecturers were l'Abbé Maheux of Laval University; Mme. Thérèse Casgrain; the Most Reverend Maurice Roy, Archbishop of Quebec; and, in 1951, the Right Honourable Thibaudeau Rinfret, Chief Justice of Canada.

Chief Justice Rinfret refers in his opening paragraphs to the history of this foundation. I know of no other lectureship which embodies to such a remarkable degree the vision and idealism of youth. Canada lost two citizens of the finest type in the passing of Duncan and John Gray. Through the establishment of this *chaire de conférences*, the concept of Canadian unity which possessed their hearts finds expression in the contact of minds and the impact of personalities. The fulfilment of their high purpose is accomplished through the calibre, competence and character of the Lecturers.

It is encouraging to read the evidence of Chief Justice Rinfret with respect to the distinctive elements in our national life, and particularly his testimony regarding the operation of the civil and common law. His pre-eminent judicial office affords to him a vantage-point from which he views the Canadian scene with a unique perspective. In the Supreme Court of Canada, under his wise and able leadership, civil law and common law are administered by one tribunal. There is, perhaps, no institution in Canada in which the diversities of our two basic cultures are more completely reconciled. It is particularly fitting that Chief Justice Rinfret gave this Lecture. In him we find a personification of that unity of French and

English-speaking Canadians which is the Lectureship's *raison d'être*.

The "poisonous leaves of the vine of racial dissension" wither in the friendly, yet impartial, atmosphere of academic halls. Here, as in many other areas, the universities have a great responsibility to lead in analysis and appreciation, understanding and amity.

SIDNEY E. SMITH,

President, University of Toronto.

WE ARE ALL CANADIANS

I DESIRE at the outset to express my most sincere thanks for the distinction which you have been pleased to confer upon me this evening. It is a high honour to be selected to give the Duncan and John Gray Memorial Lecture and I am deeply conscious of the fact that those who delivered the lecture in previous years are very distinguished citizens. For that additional reason, the invitation of President Smith was very much appreciated.

I am sensible, of course, that this invitation comes to me by reason of the judicial office which it is my privilege to hold and that it is not attributable to any merits of my own. But you do not need to be assured that no compliment could be more gratifying to my personal inclinations.

Shortly after I accepted the invitation I received a magnificent letter from Mr. Gray. This letter expresses so admirably the true purpose of the Memorial Lecture that, with Mr. Gray's permission, I would beg leave to read it at the beginning of my address. It is as follows:

I have learned from President Smith of the University of Toronto that you have consented to give the Duncan and John Gray Memorial Lecture for this year. I am writing to say how deeply I appreciate the fact that you are making this contribution to the growing understanding between French-speaking and English-speaking Canadians.

No doubt you have been made acquainted with the circumstances under which the lectureship was established. But I should like to add a personal word. My son John spent all of the summer of 1940 with the Prémont family, of Ste. Famille, working on the farm and learning the French language. Duncan and I joined him during the last three weeks of his stay. Both boys died during the War, Jack in service in England, Duncan, who had been rejected by the services because of limitations of health, a few months later.

I am very sure that the idea of a lectureship would not have occurred to me had it not been a natural result of the friendship

and affection with which we found ourselves surrounded in the Prémont home. The boys had lost their mother three years earlier and no doubt almost unconsciously they found a sort of reincarnation of their mother's love in the generous heart of Madame Prémont. The foundation of the lectureship springs, therefore, not so much from an academic approach to a problem, as from the simple affection and all-embracing good-will of the family into whose home we had come as strangers. In other words, it is essentially the creation of your compatriots.

I replied at once to Mr. Gray:

I was deeply moved by your very kind letter of the 3rd instant.

President Smith had given me some of the background of the Duncan and John Gray Memorial Lectureship, but, of course, it was not in any great detail. It was, therefore, a source of satisfaction to me to learn of the reason which prompted your decision to perpetuate the memory of your two sons by giving a lectureship which would further the already existing good relations between the French and English races of our country.

The affectionate manner in which you speak of the Prémont family has touched me very much. I am sure that this family, and particularly Madame Prémont, accepted your sons as if they were their own; and I am equally as certain that the love and kindness shown your sons was reciprocated by them in full measure.

Your letter convinces me that you and your boys had a real understanding and appreciation of my compatriots. It is obvious that they had grasped the true meaning of unity between our two great races and it is a tragedy they were not spared to encourage others to do precisely as they had done. If more members of French-speaking families would only visit English-speaking families, and vice versa, I am confident that the result would be exactly the same as what happened to your sons.

I know that the loss of your sons is irreparable, but you will derive rich consolation and satisfaction in the knowledge that the Duncan and John Gray Memorial Lectureship, in addition to perpetuating their memory, is helping immeasurably to foster the good-will between our two races so much desired by your sons and by every Canadian.

I shall look forward with great pleasure to seeing you in Toronto.

Thus, we are all assembled here this evening to make a "contribution to the growing understanding between French-speaking and English-speaking Canadians."

Just recently I received, with the compliments of the Editing Committee, a book entitled *Book of Friendship—Franco-American Engineers' Relations*, published under the auspices of the "Association des Ingénieurs-Docteurs de France," in the foreword of which I find that paragraph 7 of Article (1) of the Statute of the Association states:

The object of the Association is:

To establish and develop cultural relations with various mediums or foreign personalities who might be susceptible, each in its own sphere, to favor international cooperation, to collaborate with international organizations and to pursue goals analogous to those defined above.

In these times, international co-operation is the goal towards which all civilization is striving; and it strikes me that, if that is possible between nations, surely it ought to be expected that it can be accomplished between the citizens of the same nation.

A Belgian Senator, Mr. Robert de Man, speaking in July, 1946, remarked that, in a democracy, political opponents belonged together to a higher unity, because they agreed on a certain number of principles, although they might have different opinions on the details of their application. He added that the political maturity of a nation could be measured by the degree to which such unity existed in the minds of the opponents. Mr. de Man advised that the morbid tendency of trying to injure the honour and reputation of opponents should be eliminated from political life. He went on to say that chivalry as an essential element should be brought back into that life, and youth in particular ought to learn such a guide of conduct. Democracy, Mr. de Man said, does not consist solely in the rule of the majority, but it consists in the existence of fundamental principles with respect to the character of the state and the rights of the citizens and in the recognition that these principles must remain above partisan legislation in order to procure that highest unity of the nation.

Of course, I am not forgetful of the words of our worthy President Smith, in the course of his installation address, at

which I had the privilege of being present and of receiving from the University of Toronto the cherished degree of Doctor of Laws. After having stated that it was an axiom of political theory that federations are not easy to govern, President Smith recommended the adoption of the "wise policies under which the rich diversities of the parts may be reconciled with the welfare of the whole."

I find the same idea in a book of Mr. Jacques Maritain, entitled *Les Droits de l'Homme et la Loi Naturelle*, where he says (translated):

A society really, and not only decoratively, Christian, must regard law and justice, civic friendship and equality as essential principles of the structure of life and peace in the community.

And he continued:

Some persons seem to imagine that natural law is an invention of American independence, or of the French revolution. On the contrary, natural law was inherited from Christian ideals and classical thought. It goes back to Grotius, to Suarez and to François de Vitoria; and further to St. Thomas of Aquinas; and further to St. Augustine, the fathers of the Church and to St. Paul; and still further to Cicero, the stoicians and the great moralists of antiquity, and its great poets and in particular to Sophocles. Antigone is really the eternal heroine of natural law, which those who lived centuries ago used to call the unwritten law; and, after all, that is the appellation which embodies the idea.

Now, let us try to apply these general principles to the situation as we find it in Canada. I borrowed the following information from a bulletin issued for the use of study groups by the Canadian Association for Adult Education. The French-Canadian minority comprises nearly one-third of Canada's total population and the Province of Quebec comprises just over 16 per cent of the whole area of the Dominion. Unfortunately, the figures I am now quoting are from the census of 1931, but at that time 29 per cent of the population was of French origin and 53 per cent of British origin. Seven million Canadians spoke English only, 1,780,000 spoke French only, 1,322,000 spoke

neither French nor English. Moreover, in the same year, over 42 per cent of the population of Canada was Roman Catholic. The British North America Act—the Act of Confederation—not only gave the new Dominion home rule, but also guaranteed French-speaking Canada equal rights in all matters with English-speaking Canada. The average French-speaking Canadian has no strong sentimental links with Europe, neither through Britain nor through France. Canada itself is their one and only “patrie.” They are Canadian nationalists, but not separatists.

As you well know, the French have been in Canada for more than three hundred years and, therefore, their ties with France are naturally not as strong as the ties of the English-speaking Canadians with England.

Their differences from the English-speaking Canadian must be found in their religion, their language, and their civil laws.

I will discard immediately the question of any difference of religion. There is no country in the world where the population is of the same religious persuasion; and one will at once think of the four freedoms of President Roosevelt, one of which is: “Freedom of every person to worship God in his own way every where in the world.”

Then let us discuss the language question. Of course, far be it from me to be offensive to any one, but one cannot erase from ancient history the fact that, in 1066, when William the First (William the Conqueror) entered England, he brought with him and with his followers the French language, which remained in force in both the Royal and Judicial Courts for three hundred years. One can read in *L'histoire littéraire du Peuple Anglais*, by Mr. Jusserand, a former French Ambassador to the United States, about what he calls the infusion of the Latin and French ideologies into the Anglo-Saxons and the relation of England with the civilizations to the south. Mr. Jusserand relates that St. Wulfstan, the last Anglo-Saxon Bishop, was very nearly deposed on the ground that he did not know French. He adds that for a long period of years the

French and English languages remained superimposed; and there was no surprise, therefore, in the progress made by the French language in England, where it was the language of the laws and of the Public Acts, of the Courts of Justice, of the Parliamentary Debates, and, in Mr. Jusserand's words, "of the most delicate poets."

This went on until the second half of the fourteenth century. To my astonishment I read in Mr. Jusserand's book that such was the use of the language that many translations of the books of antiquity—legal tomes such as the Institutes of Justinian—were expressed in French verses, and even the Coutume de Normandie was also put into French verses in the thirteenth century.

Mr. Gaston Paris, in his work *La Littérature Française au Moyen Age*, writes that the poem "Tristan and Isolde" was first written in French and that the first sketch of "The Merchant of Venice" was also in French.

As a matter of fact, one could say that there are several hundred English words, whether or not derived from the French corresponding word, so very similar that the real difference lies only in the pronunciation (Lincoln's *Library of Essential Information*, 1947, p. 28).

Moreover, several French words have been retained in the English legal language. I need only refer to "choses in action," "feme sole," "pour autre vie," "cestui que trust," "de-hors the record," or, in equity, "doctrine of cy-près." In the criminal law, we find "autrefois acquit" and "autrefois convict"; and, on a petition of right when His Majesty the King graciously orders right to be done, He orders: "Soit droit fait al partie," an expression which originated during the reign of Edward I. Of course, I need not remind you that the words for a Royal Assent are "Le Roy le veult"; and, in the case of a Money Bill, "Le Roy remercie ses bons sujets, accepte leur b n volence et ainsi le veult." Our Courts of Justice are still opened by the words "Oyez, oyez," as at the time of Edward III.

My object in reminding you of these historical facts is to

stress the point that it is by evolution that the English language has gradually grown apart from the French language and, after all, it is not going too far to say that they have a common origin.

What I find true of the language is more so of the civil law. The common ancestor is the Roman law. I remember that on the occasion of the unforgettable meeting of the Bar Associations of the United States and Canada in England and in France with the respective Bars of those two countries, Mr. Wickersham, who was then Attorney General of the United States, made the point that the common law itself went back in part to the Norman laws and customs, imported into England from France at the time of William the Conqueror; and that statement is shared, amongst others, by Roscoe, who in his *The Growth of English Law*, at p. 15, writes:

The influence on the common law of the canon law and of Roman law is obvious, not only in its breadth of view, but in some classical pedantries; occasionally also in some actual rules which supply the absence of authority arising either from English dicta, practice or custom.

Lord Shaw, when he spoke at Vancouver as guest of the Canadian Bar Association, referred to Justinian's "service to the world (which) was to provide a body in which the soul of Roman law, weary but not dead, might sleep until the appointed time for its awakening." And likewise Chief Justice Anglin, of the Supreme Court of Canada, said:

Roman law has exercised an enormous influence in the development of both systems (the common law and the civil law). English common law judges derived from it principles on which they decided cases for which the customary law of England did not provide.

In an address before the Bar of Quebec City, speaking of the Civil Code, the Chief Justice expressed the following hope: Would that this excellent and scientific body of law, so detailed yet so great, so logically complete, were better known throughout the other provinces of Canada.

Mr. Justice Sanford, of the United States Supreme Court, speaking in the Palais de Justice, in Paris, referred to the Code Napoleon (of which, as you know, the Civil Code of Quebec is a counter-part) as being the work likely to assure Napoleon of immortality going beyond his military victories.

My illustrious predecessor, the Right Honourable Sir Lyman Duff, speaking at the Annual Dinner of the Ontario Bar Association, on the 22nd May, 1925, referred to the fact that, in Canada, we have "flourishing side by side, as living systems by which the business of men is governed, the two great systems of law, which, roughly speaking, divide between them jurisdiction over the civilized world"; and he went on to say:

Yet our experience has shewn that there is no impassable chasm separating practitioners in these two systems. Counsel disciplined in the common law find themselves at home in causes in which the principles of the civil law are to be applied. Mr. Lafleur is constantly briefed in appeals to the Supreme Court of Canada from the common law provinces. In that court, judges trained in the common law sit together with those trained in the civil law, and these judges deliver judgment indifferently, now in common law appeals, and now in civil law appeals. Lawyers of this country are coming to think, and as time goes on, more and more will come to think, in terms not of the civil law only, or of the common law only, but in terms as well of the broader principles upon which both structures are reared. . . .

The habitual co-operation of the whole Bar of this country without distinction of locality or race, is a fact of far more than professional importance. It is not the language of rhetoric, but only the language of sober truth, to say that the legal profession has given a great example of co-operation and of the fraternal concord which such co-operation may generate. It is no exaggeration to say that the legal profession has been and is a powerful agency of union and harmony . . .

We have been accustomed to predictions that the presence of the two great historic races, especially in these central provinces, will become in increasing degree an occasion of division and a source of weakness, that we have here the factors of another "irrepressible conflict," which must ultimately prove fatal to the integrity of this

country. That this racial diversity has in many ways complicated our national problem, no honest or patriotic man would be so foolish as to deny. But, Mr. President, difficulty does not necessarily mean disaster. A strong nation, as a strong man, augments its strength by conquering its difficulties. No nation was ever "swaddled and dandled" into greatness. It was indeed out of this same situation that the Union of Canada was born. Mr. President, I, for one, decline to believe that in a long view there is necessarily any disadvantage in the fact that the two nations which, directly or indirectly, have been the greatest humanizing agencies in modern Europe, are represented as they now are in the citizenship of Canada. On the contrary, that circumstance ought to prove in the future a source of power and not of weakness; but if this country is to rise to the height of her great mission, and a great mission I sincerely believe it to be, we must accustom ourselves to think in terms of the whole country, and nothing less than the whole country. We British have no desire to forget that we are of Norman, as well as of Saxon, stock; or that Norman French was the nursing tongue of the common law. And we gladly pay our homage to France—France, who held the pass for centuries against the onset and menace of barbarism; France, who has ever held aloft the torch of enlightenment. Something, my friends, something of supreme value, will be lost to the world if that torch ever ceases to shine.

May I be permitted to adopt for myself the reference made by Sir Lyman to the Supreme Court of Canada. In this Court there are brought together, for the highest administration of justice in our country, representatives from all sections of Canada—the Maritime Provinces, the Central Provinces, the Prairie Provinces, and the Province of British Columbia. I have always thought that our Court furnished the most cogent example of what can be accomplished when the two races are brought together. It has been functioning since 1875 in the closest harmony and, I hope, to the complete satisfaction of the country.

Adverting to the question of the diversity of the civil law in Quebec and the common law in the other provinces, I feel, after sitting for twenty-six years in the Supreme Court of Canada, that I am in a position to affirm without fear of contradiction that the same legal problems, whether they come

from Quebec or from the rest of Canada, lead us to the same solutions, even when the road to the latter may sometimes be different. The same opinion was held by Chief Justice Hughes, of the United States Supreme Court, who said in Paris: "Under our two systems of law we render similar judgments in similar cases."

And as expressed by Pollock, in his *History of the English Law*, at p. 10: "We now realize that the laws of every nation are determined by their own historical conditions, not only as to details, but as to structure."

We have two great examples in Belgium and Switzerland, where a similar situation exists with respect to differences in language and otherwise. Indeed in Switzerland they have, in certain parts of that country, the French, the Italian, and the German languages. For all we know, since the last war, Belgium and Switzerland are perhaps the most prosperous countries in Europe.

Not very long ago I was reading in a magazine an article on "Switzerland and Ourselves [meaning Canada]," by Mr. René Fandrich, where he ventured to say that it is almost an insult in Switzerland to ask a citizen if he is a French Swiss, a German Swiss, or an Italian Swiss; but, if one has the temerity to do so, the answer will be: "I am a Swiss, purely and simply—a patriot down to the marrow of my bones."

Well, gentlemen, what is left of diversity between French-speaking and English-speaking Canadians when once you have examined analytically the questions of religion, of language, and of law? If you agree with what I have said, you will have difficulty in discerning fundamental differences. That is precisely what the sons of Mr. Gray discovered for themselves when they went to live with the Prémonts in the Parish of Ste. Famille, on the Island of Orleans. They came to the conclusion—a conclusion which I would like you to reach this evening—that the so-called differences are entirely inconsequential. In this connection the words of Mrs. Casgrain, when she delivered this memorial lecture, are very apposite: "To appreciate the value of their respective qualities by knowing more

of what they really mean, and so be proud of each other's accomplishments in the common association."

Mrs. Casgrain added: "There is nothing like personal human contact to counteract unreasoning prejudices so easily engendered by subtle propaganda."

As pointed out by the present Prime Minister, the Right Honourable Louis S. St. Laurent, when he appeared here and inaugurated these lectures:

Federation has forced French and English speaking men and women to live side by side as members of the same community and to construct a nation on the foundation of the two cultures and two languages . . . We have embarked on the joint task of building a nation and to live together as such.

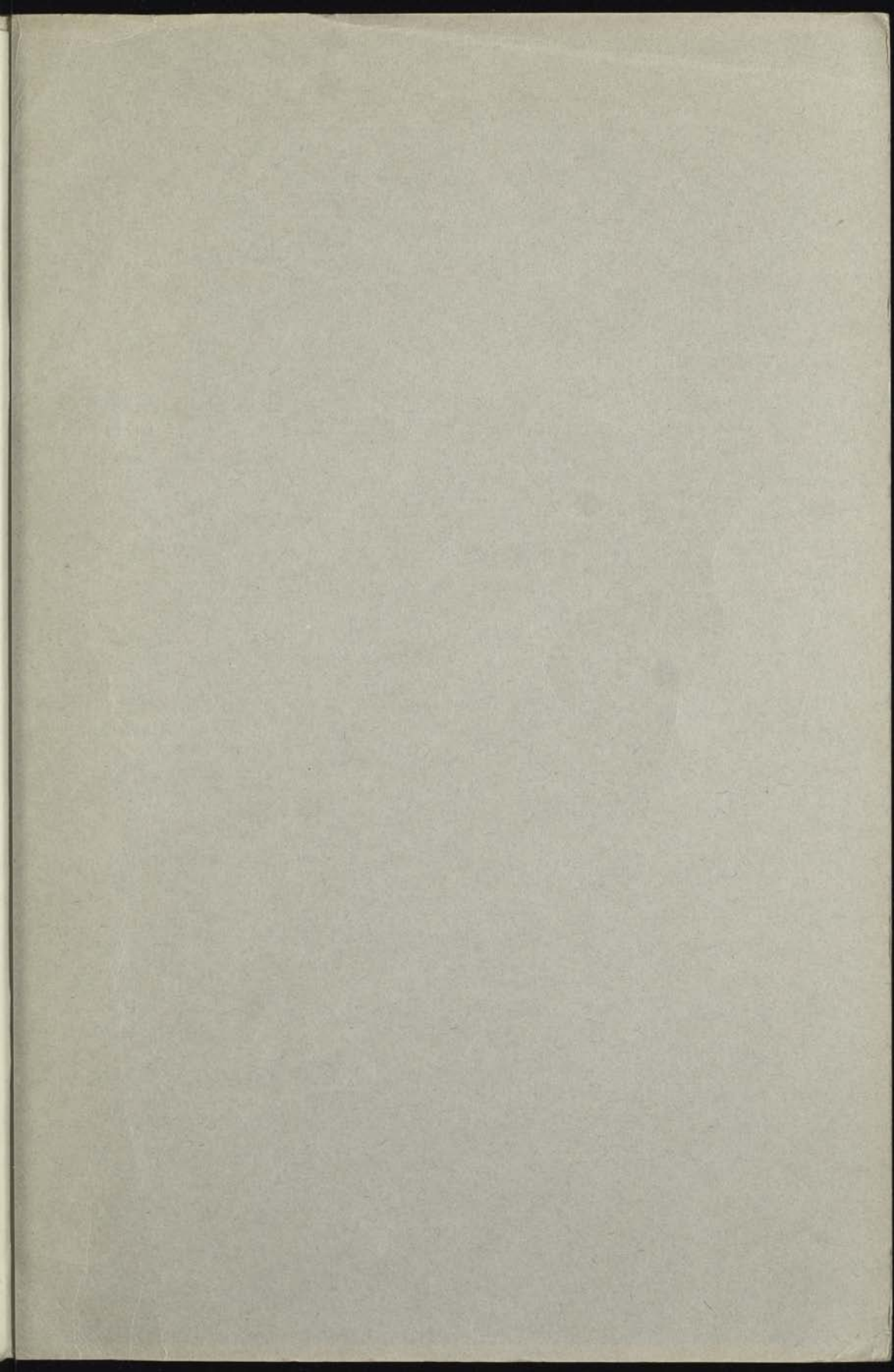
The English-speaking population is more numerous, the French-speaking is in the minority. To illustrate the point I have been attempting to make I would like to cite the words of Lord Acton:

The most certain test by which we can judge whether a nation is really free is the amount of security (and liberty) enjoyed by minorities. . . . I mean by liberty, the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and majorities, custom and opinion.

You know the book, *Les Discours du Docteur O'Grady*, by the great French writer, André Maurois. It contains a passage which I have never forgotten since the day I first read it. Mr. Maurois refers to the fact that notes of music, although they are all different when considered separately, when assembled and played together result in the greatest symphonies; and he asks himself why men of the world could not be assimilated to notes of music and live together harmoniously.

Let us strip the poisonous leaves from the vine of racial dissension and tear the roots out so that it shall never flourish again, never break out in new strife. Let us collect our notes of music so that we can go forward with unbounded faith to the goal we are all seeking—a truly united Canada; and we shall leave this hall with the very firm conviction that, although perhaps dissimilar in some respects, after all we are all Canadians.

January 24, 1951



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