FROM AN ENGLISH OFFICE WINDOW

War Crimes

As the outrages perpetrated by the Germans develop in ferocity and extent there is an increasing measure of concern that there shall be adequate retribution. The subject is complex and there are varieties of opinions from the legal point of view as well as those which exercise the mind of the ordinary layman. The subject is really too extensive to be dealt with in these communications which cannot pretend to do more than draw attention to matters of current interest. The representatives of the Allied Nations, especially, of the smaller, naturally feel very strongly on this subject, and evidence is being accumulated so as to provide something in the nature of an indictment against particular persons. There is a body working upon the subject in which they are strongly represented, and it appears to lean towards the constitution of some kind of Inter-Allied Criminal Court,—the Lord Chancellor has depreciated the use of the word "international" in this connection. The suggestion is that the Court might have divisions sitting in the countries where the crimes were committed, though it is admitted that these might not always be convenient or practicable when the accused had committed crimes in several countries. After listening to one of the most eminent of the foreign jurists in favour of this scheme I was impressed that he dismissed the argument for a military court on the ground that it would be less expeditious. Apparently that has been his experience in his own country, but there has been nothing in this country in the present war to justify that contention. Even prisoners tried for treason and exercising all their rights of appeal have received the due punishment for their crime within a short period of time. The Lord Chancellor in a debate which took place in the House of Lords on 7th October last clearly seemed to lean towards action by the military courts as being more simple and expeditious than any other form of procedure. Whatever prospects there are of bringing the criminals to justice are in the hands of the fighting forces. Practical considerations must control the decision if anything effective is to be accomplished. Any objection that the military tribunals are outside the scope of the law is completely answered by reference to the Manual of Military Law and the corresponding volumes in use in the Dominions and United States. It is fair to add, however, that the foreign jurist who spoke on behalf of his colleagues

studying the subject did not examine the arguments in favour of the military courts, but took the sole objection that they would involve delays and based his proposals upon obtaining judicial punishment after the fighting is over.

Money

"At the present time there are millions of persons, of comparatively humble position, who have put their savings into a savings certificate, war bonds and so forth. Persons of that kind in ninety-nine cases out of a hundred refer to these investments of theirs as their "money" and would so describe them if they attempted to dispose of them by a home-made will—as no doubt many of them will—with the result that they would succeed in dying intestate with regard to their savings." (Greene M. R., *In re Morgan*, [1942] 2 Ch. at p. 346). This is the effect of the definition of "money" invented by the Courts and adopted in a catena of decisions. Miss Morgan made her own will and directed that "all moneys of which I die possessed of shall be shared by my nephews and nieces now living." Her estate consisted of investments, cash at the bank, dividends received or accrued due, rents prior to her death, a proportion of rents payable on property of which she was life tenant, some income tax repayments to which she was entitled, household goods, and some freehold properties, including those specifically devised. The Court of Appeal felt bound to adhere to the rule that the words do not cover either the investments which are, of course, things which can be expressed in terms of money, or the freehold not specifically disposed of, or the household goods. In doing so they recognized that they were defeating the intentions of the testatrix, and the Master of the Rolls went so far as to say that the result is "a blot upon our jurisprudence." He invited an appeal and the House of Lords have applied the fundamental rule in construing the language of a will to give words the meaning, having regard to its terms, intended by the testator. The Lord Chacnellor traced the development of the use of the word "money" (The Times, 26 Jan. 1943) even to the extent that it might be used to cover the whole of an individual's personal property. This might be a "popular" as distinguished from a "legal" meaning but in interpreting a will, especially a home-made will, it might be the more important of the two. Accordingly the House of Lords which included Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Romer, decided that the bequest of all moneys of which the testatrix died possessed in-

cluded all the net personalty of her estate. This interpretation may be embarrassing to lawyers drafting wills who naturally seek to use words in their legal meaning, but it is an example of a wholesome desire, evinced more than once lately, on the part of the Courts to keep abreast with modern thought and rescue law from shackles which tend to make it unacceptable to the general public.

The Convoy System

To every man, woman and child in these islands the convoy system has become a matter of vital concern though all may not realise it. The importance of the system at the present time differs from the value which has been attached to it in past centuries and has formed the subject of controversy among international lawyers. Sweden is generally credited with starting the discussion in 1653 by claiming during the war between Great Britain and Holland that the belligerents ought to waive their rights of visitation over Sweden merchantmen if the latter sailed under a convoy of a Swedish warship whose commander made a declaration that the convoyed vessel had no contraband on board. Holland as a netural took up the same position later in the century and re-asserted it during the American War of Independence. Between 1780 and 1800 treaties were concluded in which Russia, Austria, Prussia, Denmark, Sweden, France and the United States of America recognized this right, but Great Britain always refused to admit it. Another aspect of the subject is the right of the warship to control the merchant vessels in the convoy. This and many other developments of the convoy system are dealt with by Mr. Owen Rutter in "a history of convoy" just published under the title "Red Ensign." He finds that the earliest legislation on the subject was in 1792 when masters sailing in a convoy under naval escort were made liable to a fine of £500 or one year's imprisonment if they disobeyed the escort commander's signals or left the convoy without his permission. Similarly an escort commander leaving his convoy even under the temptation of taking a prize into court rendered himself liable to court martial and forfeited his share in the value of the prize. Although the book is not an official publication Mr. Owen Rutter, who is well known for his writings on allied subjects, being attached to the Admiralty, has derived his information from official sources so that his work is authoritative as well as informing.

Action Against Government Departments

Lord Hewart shortly before his death was once again vindicated in his attitude towards the operations of Government Departments. Goddard L. J. in the course of a judgment in an action brought by the Ministry of Supply (*Minister of Supply* v. *British Thomson-Houston Co.* 59 T.L.R. 242) had occasion to observe that he could wish that the question of the position of the Minister "had been raised in circumstances which disclosed at least some semblance of merits" (*loc. cit.*, at p. 244). The Ministry of Supply was established in 1939 (2 & 3 Geo. 6, c. 38) and its powers in respect to taking legal proceedings were given, among a number of provisions by reference to previous legislation, by substituting the Ministry for the War Office in the War Departments Act, 1867. S.20 of that Act provides that the "Secretary of State for War may institute and prosecute any action, suit or proceeding, civil or criminal concerning military or ordnance stores . . . . sold or contracted to be delivered to or by the Secretary of State for War . . . . and may defend any action, suit or proceeding concerning any such stores . . . ." Under that authority the Ministry took proceedings against the British Thomson-Houston Company for breach of contract and claimed £2,235. The Company sought to put in a counterclaim for £68.12 but to this the Ministry took exception on the ground that although they had a right to sue they could not be sued and as a counterclaim was in the nature of an action against them the Company's only remedy was to proceed by petition of right. Mackinnon L. J. who delivered the judgment quoted with approval an observation of Scrutton L. J. in one of the cases under consideration (*Rowland and Mackenzie Kennedy* v. *Air Council*, 96 L.J. Ch. at p. 479). "Like him," he said, "I have 'been concerned with business' and like him I think that the difficulty of a subject getting justice done against a Minister or a Government Department is thoroughly discreditable to the English constitution." Scrutton L. J. added a hope that legislation as to Crown procedure might be expected at an early date. That was in 1927. Now in 1943 nothing of the sort has been done. Mackinnon L. J. came to the conclusion in which the Master of the Rolls and Goddard L. J. agreed that if under the statute the Minister may sue the other party to a contract for alleged breach of it, the other party though a subject of the Crown, may equally sue the Minister for an alleged breach of the contract by him. It will be remembered that some reference to the delay in dealing with the subject was made in a debate

in the House of Lords when discussing actions against the Crown for torts (see Canadian Bar Review, Vol. XX, p. 552). The attitude taken on that occasion might have been a warning to the Ministry of Supply to avoid a course of action which could only lead to well deserved strictures by the Court.

Law in the National Life

The place which law occupies in the national life, especially among the English speaking peoples, is readily recognized by lawyers, but it is not so willingly appreciated by laymen. On that account perhaps I may draw attention to a volume, recently published by the Oxford University Press, by Dr. Ernest Barker with the title "Britain and the British People." It will also be welcomed by many for its intrinsic charm and worth, especially at the present time. It is rare to read from the pen of a layman such a passage as that which he appends to a chapter in a series of notes of a ride through the city of London and into Westminster covering a succession of three areas, the City, Society and the State, symbolical of English life. "When I try to understand" he writes, "the organized scheme of our national life—our Society with all its voluntary associations and our State with all its liberties—I take off my hat to the lawyers . . . . I sometimes think that the heart of England is somewhere near the Temple Bar." Although Dr. Barker has been quite near to the study of law as Professor of Political Science in Cambridge and lecturer of the Lowell Foundation in Boston, yet he has never been actually a student of law, though he has forensic ability to argue on almost any current controversial topic. His point of view of law is detached enough to recognize its defects "expensive, uncodified and what not", and still he is able to say it "is about the best thing we have."

MIDDLE TEMPLAR.