

## FROM AN ENGLISH OFFICE WINDOW

*Delegated Legislation*

The House of Commons has had a debate (26th May) on one branch of the war-time legislation to which the President of the Canadian Bar Association has drawn attention (*supra* p. 315). They were concerned specifically with the extent to which subordinate legislation may infringe the rights and privileges of the individual during war-time or in other respects trespass beyond its legitimate field of operation. The main proposal was that a Committee of the House should be set up somewhat on the lines of the recommendations contained in the report of the Committee on Ministers Powers in 1931, which is usually known by the name of its chairman, Lord Donoughmore. Useful suggestions were also made for an improved nomenclature to distinguish the different types of delegated legislation. Tributes were paid several times during the debate to the excellent work done by the Civil Service and the mover of the resolution, Major Petherick specifically stated that any suggestion that the civil service is endeavouring to grasp more power for itself is unfair. The conditions of war have rendered necessary the enormous output of delegated legislation due to the willing surrender of the people to be controlled in a multitude of new ways in order that their energies may be directed to the common task.

The Home Secretary in his reply took his stand mainly on two points; that any committee would be unworkable in war time and that if it could function it would lead to divided responsibility. At present the responsibility is wholly with the Government and must remain there. He is a skilful and conciliatory debater and pleased the House by producing the following by an anonymous author, which he said that he had found "accidentally in the middle of a lot of very dull stuff on the file of a State Department."

## OCTOPUS

The Ministerial octopus —  
 Grows new limbs every day,  
 Three more were quickly sprouted —  
 For each one chopped away,  
 They grapple and they strangle us —  
 Our struggles feebler grow,  
 Until we drop into the maw —  
 Where all its victims go.

Our substance when digested there,  
New tentacles induce,  
Whose suckers drain the cream away —  
From all which we produce,  
Yet, do we not deserve this fate?  
We play the silly fool,  
When the octopus could be controlled —  
The House of Commons — ruled.

Mr. Morrison explained instructions which have been given to Government Departments upon details as to limits to be covered by various types of orders in order that they might come within the direct cognizance either of the Minister or of Parliament and of improvements to be effected in the drafting of such details as the issue of explanatory memoranda.

The Attorney-General, Sir Donald Somervell in winding up for the Government admitted that "our statute book is not a credit to any country" and accepted the resolution which was in the following terms: "That this House, admitting the necessity for war purposes of giving abnormal powers to the Executive, is of opinion that Parliament should vigilantly maintain its ancient right and duty of examining legislation, whether delegated or otherwise. "

*The Times*, like a good many other people, did not find the skilful reasoning of Mr. Morrison "wholly convincing" and pointed out that the House of Lords has for some time had a Special Orders Committee. It agreed that the proposed standing committee "would not obviously impose any burden on ministers or their advisers. The burden which it would impose, a most substantial burden, would be on members themselves. If there are members ready to assume that burden it seems a pity that the constitutional experiment of a committee on delegated legislation should not be tried." Sir Leslie Scott, who succeeded Lord Donoughmore as Chairman of the Ministers' Powers' Committee followed this up by recording that the late Speaker, Captain Fitzroy, had wholly approved of the recommended procedure.

### *Paper Salvage*

The campaign to save paper has developed in intensity since I referred to the subject previously (Vol. XX, p. 337). At the same time there has been an increasing amount of care by the authorities to secure that important documents are not sacrificed needlessly. The Law Society has issued a note for general guidance that documents made or executed in whole or in part before the year 1750 should be excepted from any general scheme. If a

solicitor held any public office or had the custody of the records of "any ecclesiastical corporation, body or court, public or local authority, commission, statutory body, endowed foundation, public utility undertaking or social service organization" then they should be excepted with a view to detailed examination. In this connection good work is being done by the British Records Association which has the cordial interest of the Master of the Rolls in his capacity as the guardian of State records.

Guidance has also been provided by the Law Society on the subject of parchment as a valuable material which should be separated from waste paper and reserved for its proper use—the making of glue, gelatine size and other substances of great value in connection with war purposes.

While the campaign is doing a good deal to get rid of rubbish and lumber, oftentimes the accumulation of decades, it is also drawing attention to the value of documents unsuspected by the owner. It may be hoped that this will bear fruit when there is time and opportunity. This is particularly true of the records of local authorities and something of what is possible in making them more easily known has been shown by an exhibition arranged under the auspices of the Northamptonshire Records Society. It illustrated the development of the poor law since its foundation in the early days of Elizabeth and the activities of its administrators. It happened that the two statesmen who were prominently identified with the enactment of the Elizabethan Poor Law and the Poor Law Amendment Act of 1834 respectively namely, Lord Burghley and Lord Spencer (then Lord Althorp) were both of them Northamptonshire men. Homely details interested visitors such as the accounts from Wellingborough work-house during the Napoleonic wars which recorded that in 1814 one weeks' supply for 43 people staying five days and 44 people staying two days comprised the following:—Beef 59 lbs., bread 305 lbs., potatoes 13 gallons, cheese  $10\frac{1}{2}$  lbs., oatmeal 7 quarts, bones for soup 22 lbs., sugar 3 lbs. An exhibition which stimulates popular interest in the past in this way has a practical value at the present time. It gives people an assurance that whatever wars and vicissitudes may assail Great Britain the national life is maintained and provides an instructive stimulus to a renewed endeavour in the present struggle through a realisation of our heritage from the past.

#### *Music While You Work*

A popular item with the above title in the B.B.C programme, which is sometimes relayed to North America, has

given rise to an interesting group of cases (*Ernest Turner Electrical Instruments Ltd. v. Performing Rights Society Ltd.*; *Performing Rights Society Ltd. v. Gillette Industries Ltd.*, 59 *Times Law Reports* 200). The decision of the Court of Appeal has by no means been received with unanimous agreement.

The case of the Performing Rights Society is that an author is entitled to remuneration for his work and that the law of copyright gives it to him. Performances in factories by which the output of work is stimulated are a special feature of work under war conditions. The agreement between the Performing Rights Society and the B.B.C. provides for the reception only by domestic and private users. But the diffusion of the programmes in factories, it is contended, is another matter and not covered by the agreement. It is a performance "in public" according to the Copyright Act, 1911. How can the performances be in public, said the factory owners, when no one is admitted to the works without special permits. On the other hand, how could it be a private performance when it would be heard on every floor of the building by at least 600 people and in a number of factories by many more.

Bennett J. reviewed the cases and by making use of this antithesis as it had been applied in *Jennings v. Stephens*, [1936] Ch. 469, came to the conclusion that as the performance was not in private is must be in public. The Court of Appeal agreed.

Lord Greene, Master of the Rolls, quoting with approval Lord Wright's dictum in *Jennings v. Stephens* that "the true criterion seems to be the character of the audience" (*ubi sup.* at p. 479) took that as the basis of his judgment. The work-people are an audience and as such a section of the public. The fact that the music assists their work he regarded as entirely immaterial. Conversely a housewife may be assisted while doing her housework but the performance is still in private. Admittedly the interpretation of a statute is a question of law, but, said Lord Greene "in answering that question of law the chief guide to the Court is, in my opinion, the guide of common sense. Some cases fall on one side of the law and some on the other." Accordingly, having reached a decision by the light of common sense as well as of law they refused leave to appeal to the House of Lords.

#### *Law Studies for the Forces*

The Council of the Law Society in conjunction with the Council of Legal Education and the Society of Public Teachers

of Law are assisting the War Office in conducting correspondence courses in legal subjects for those in the forces. Primarily the scheme is beneficial to men stationed in Great Britain who can have the access to libraries which has been arranged for them in nearly fifty towns throughout the country. The scheme has been extended to men in the Canadian forces. The only difference is that the men in the home forces obtain the books which they have on loan through the War Office while the Canadians obtain theirs from Dr. Chatwin of the Canadian Legion War Services. The courses are not intended as a preparation for any particular examination though they may be found useful for students entering for the examinations to become solicitors or members of the Bar. They are also an aid to the examinations of some other professional bodies as well as for the law degrees of universities.

The subjects cover a fairly wide range and normally only one is taken at a time as few men have time for more, and a large proportion of those who made an effort to fill their time while "standing by" have found themselves called to more active occupation and so unable to continue the course.

Women as well as men are eligible and originally it was for those stationed in the British Isles, Iceland, Gibraltar and West Africa, though by degrees it is being extended beyond these limits.

All the tutorial work is done gratuitously and if nothing more is accomplished than establishing the association between tutor and student there is a definite value in the scheme. I understand that particulars of the working of it have been supplied to the Association of American Law Schools with a view to some similar arrangements for the forces of the United States.

MIDDLE TEMPLAR.