

FROM AN ENGLISH OFFICE WINDOW

Rights of Self-defence

Under the Poor Prisoner's Defence Act (20 & 21 Geo. V., c. 32) any person committed for trial for an indictable offence is entitled to free legal aid in the preparation and conduct of his defence at the trial. A man named Woodward has just provided a somewhat unusual case under the Act for the consideration of the Court of Criminal Appeal. The first counsel assigned to him had to return his brief. The papers were then handed to another counsel and after the appellant had been arraigned the counsel to whom the papers had been handed stated that he appeared for the appellant. The latter then said that he would rather not have legal aid and would prefer to conduct the case himself on the reasonable ground that he had not had an opportunity to see counsel. The Assistant Recorder told him that he was then in the hands of counsel and the appellant said "I think I ought to be allowed to conduct the case myself." At a later stage the appellant twice intervened to make observations or to ask questions of a witness. He was again told that he was in the hands of counsel and would be very well advised to leave matters to counsel's discretion. The case for the Crown was that when one counsel had been briefed an accused person was not in a position to repudiate him and claim the right to conduct his own case.

The Lord Chief Justice delivering the judgment of the Court of Criminal Appeal (*The Times* 9th. December, 1943) thought that no person charged with a criminal offence could have counsel forced on him against his will. In his opinion the refusal of the Assistant Recorder to allow the appellant to claim his right was wrong and resulted in an injustice to the appellant.

Dealing with the merits of the case the Court found that two charges of stealing and receiving made against the appellant were confused and that the evidence had not been clearly dealt with by the Assistant Recorder in his summing up. Accordingly in the circumstances the Court thought it impossible that the conviction should stand.

Crowded Omnibus

War conditions have given rise to omnibuses and other vehicles being allowed and even urged to carry a full load of passengers for whom there is not adequate provision, especially

by way of rails or straps for those who are obliged to stand for the journey. As a vehicle was being driven at admittedly an improper speed round a sharp curve a passenger standing near the doorway was precipitated into the roadway with a fatal result. The appeal of the Motor Traction Company was on the ground of the passenger's contributory negligence (*Western Scottish Motor Traction Co., Ltd. v. Fernier, (or Allam) and others*, 60 T.L.R. 34). But the House of Lords were unable to accept this view and held that the duty of reasonable care owed by the driver to those on board extends to all passengers whether they are "holding on" or not.

Children's Allowance

Upon the publication of the Beveridge report the Government approved in principle the grant by the State of children's allowances, but steps to put the proposal into effect have awaited decisions upon other items. In the meantime the Birmingham City Council in considering applications from their staff for increases of pay owing to war conditions gave special attention to this method of meeting their difficulties. Birmingham, it may be noted, provides one of the earliest examples of the system being put into operation as the firm of Cadbury adopted it years ago for the remuneration of some of their non-manual staff. The City Council followed the same line of thought and decided to give children's allowances to certain non-manual employees in the rating, education and public assistance departments. The accounts of the corporation are subject to an audit on behalf of the central government department, the Ministry of Health, by an auditor, and he disallowed these payments on the ground that children's allowances were wholly wrong in principle because they were not a pecuniary return for services rendered. The Divisional Court could not accept this view and the Lord Chief Justice in delivering judgment said "If to obtain efficient and satisfied service, a corporation thought it right to pay a man an amount based, in part, on his expenses, he could see nothing illegal or unreasonable in it" (*Lewis and Others v. Walker, The Times*, Dec. 10, 1943). However the end has not been heard of the matter as notice has been given of an appeal to the House of Lords.

Survivor in War Time

Enemy action has provided another case for the determination of the courts as to which of two killed in an air raid sur-

vived the other. Note was made (20 Can. Bar Rev. 702) of a previous case (*In re Lindop*, [1942] 1 Ch. 377) when a man and his wife were killed at the same time. Then it was decided in accordance with s. 184 of the Law of Property Act 1925 that the senior died first. Cohen J. followed this case in deciding that the elder of two brothers died first. The Court of Appeal, however, (Luxmoore L.J. dissenting) have allowed an appeal (*The Times*, Dec. 16, 1943) and in spite of the provisions of the Law of Property Act have held that the deaths were simultaneous. As the previous case had been noted, attention is drawn to this decision as overruling it pending the appeal to the House of Lords.

MIDDLE TEMPLAR.