## FROM AN ENGLISH OFFICE WINDOW

### *The Queen as Bencher*

In recording the death of the Duke of Kent and his connection with Lincoln's Inn (20 Can. Bar Rev. 796) I referred to the position of women members of the Royal Family by suggesting that "but for the war there is good reason to believe "that a precedent would have been created in favour of the Queen". In the meantime, however, the Benchers of Lincoln's Inn once again took the lead. as they have ever done since the seventeenth century in the relationship of the Royal Family to the Inns of Court. They elected last year Queen Mary to be a Bencher of the Inn and it is understood that Her Majesty has expressed her intention when circumstances permit to be present at the Pension, which is the Meeting of the governing body of the Inn. In the minds of some Queen Mary is thus preparing the way for Princess Elizabeth in due course to become a Bencher of the Inn. The next step has been taken, however, by the Benchers of the Middle Temple, which has always been notable for its hospitality to the admission of women. They have been favoured by the consent of the Queen herself to become a Bencher. The King is already a Bencher of the Inner Temple. When and under what conditions Her Majesty may "come up to the Bench" have not yet been determined.

### *Constitutional Analogies*

Although wartime conditions lead to delays in the receipt of periodical publications they should not provide an excuse for omitting reference to items of interest and value. Accordingly I have no hesitation in directing attention to a most useful article contributed by Mr. Justice T. C. Davis, High Commissioner for Canada in Australia containing some observations on the Canadian Constitution in the *Australian Law Journal* (December 10th, 1943). Although its contents should be, though I doubt whether they are, familiar to all your readers there may be some interest and even use in noting the points as they impress an Englishman. First there is the reminder that by the British North America Act Canada has "a constitution similar in principle to that of the United Kingdom". The form of government both of Canada and of Australia "can be properly referred to as daughters of the Mother of Parliaments". "Canada", it is noted "is the only Dominion which has a Privy Council, although that is quite an honorary body".

The allocation of powers between the Central and Provincial Governments is then elucidated by the learned High Commissioner, who shows that Canada rejected the method of the United States, which was adopted by Australia in allocating the residue of legislative power to the states after enumerating the powers of the central legislature, although the British North America Act does actually contain two lists of enumerated powers. The discussion of this subject is particularly useful for an appreciation of Canada's action on the social security programme which is being followed fairly closely by some in this country.

The effect of war is seen in the War Measures Act of 1914 which compares closely with the National Security Act of 1939 of Australia and both are examples "of the delegation of extensive legislative powers to the executive authority to pass emergency or wartime legislation which has taken place in all parts of the British Commonwealth".

### *Dominion Status*

After discussing Dominion and Provincial relations and the procedure for the interpretation of the Constitution, Mr. Justice Davis explains the position arising under the Statute of Westminster which took immediate effect in Canada, South Africa and Ireland. It was not made operative in Australia until October, 1942 and still does not apply in New Zealand and Newfoundland. In a group of men with whom I have been studying the political problems of the Empire it has been interesting to note their difficulty in accepting this position and its inconsistency with plans for some super-national legislature either imperial or international in its scope. Nor do they appreciate that, in the words of the Judge, with "the development of Canada's status as a self governing country, having its own voice in international treaties and agreements, few treaties can now be described as 'between the Empire and foreign countries' " —in the words of s. 132 of the British North America Act. On the other hand Mr. Justice Davis, basing his observations on *Attorney-General for Canada* v. *Attorney-General for Ontario*, [1937] A.C. 326 states that "the Parliament of Canada has not acquired any further legislative powers through the development of the international position of Canada. Indeed because of the change in the form of treaties, the power to implement international agreements may have actually been reduced". That

looks like a problem primarily provided by a written constitution and one which may well claim sympathetic concern from an external observer.

When Britain declared war Australia and New Zealand automatically were at war and distinct action was thought to be unnecessary. Canada and South Africa declared war by separate acts and have "settled for all time the long debates among constitutional authorities whether the Dominions had the legal right of neutrality in a British war". It is good for us all to see exactly where we stand from a legal point of view and in a legal review it is necessary for us to do so. But as airmen from all the Dominions with our boys have protected me as a citizen of London resident within the sound of Bow Bells all through these years, I have a feeling that something transcending all laws binds this Empire together. Neither they, their sons or grandsons are likely to let anything separate them from my sons and their descendants in the hour of need for any of us, whatever may be the constitutional bonds or even barriers created by our statesmen and politicians.

### *Law and Letters*

The Lord Chancellor in opening a temporary library for the members of the Inner Temple in place of their wrecked building expressed a hope for a small volume which might be called "Selected Judgments" where the passages are chosen for their literary merit, their point and finish. Lord Simon gave as an example, though he admitted that he had not been able to find it in the Law reports, the opening sentences of a judgment attributed to Vice-Chancellor Bacon:—

> "This case bristles with simplicity. The facts are admitted; the law is plain and yet it has taken seven days to try — one day longer than God Almighty required to make the world."

The Lord Chancellor's remarks gave occasion for an admirable leader on Law and Letters in the Times Literary Supplement in which tribute was paid to the "monumental eloquence" in Blackstone's Commentaries. There has never been another work to equal it and much of the community of thought which prevails on both sides of the Atlantic is due to its influence. Those were days when a knowledge of legal principles was necessary to a sound general education. There is need for something of the same kind at the present time. To a large extent it was

supplied by the late Edward Jenks in the "Book of English Law". A more readable volume is Lord Macmillan's "Law and Other Things" which deals with the contacts of law with other departments of life. Professor Brierly has recently added to the Oxford Pamphlets on Home Affairs one on law which is in the right direction. There might be a warm welcome for a book on a somewhat larger scale describing "Law as a Bond of Empire" which would show how Magna Carta and the common law had established those principles of personal freedom, which our fighting men are upholding on the battlefields of the world.

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