FROM AN ENGLISH OFFICE WINDOW

Judicial Interruption

The suitable limits of interruption from the Bench were discussed some years ago in a case before the Court of Criminal Appeal (Cains (1936) 27 Crim. App. R. 204). Du Parcq J. on behalf of the Court therein said: "There is no reason why the Judge should not from time to time interpose such questions as seem to him fair and proper. They may indeed be helpful to counsel. But it is undesirable that during an examination-in-chief the Judge should appear to be not so much assisting the defence as throwing his weight on the side of the prosecution by cross-examining a prisoner." "It is obviously undesirable," added the learned judge, "that the examination by his counsel of a witness who is himself accused should be constantly interrupted by cross-examination from the bench." These observations were recalled by counsel for the appellant in a recently reported case: (Janine Gilson, Cissie Cohen (1944), 29 Crim. App. R. at p. 178) when he stated that "only on two occasions had defending counsel been able to ask ten consecutive questions without interruption from the bench." But the additional statistics which counsel provided were even more remarkable. "In the examination-in-chief of Cohen, her counsel asked ninety-nine questions but the Judge asked seventy-nine and when the appellant Gilson gave evidence-in-chief her counsel asked fifty-one questions but the Judge asked fifty-seven. That was not fair to counsel and certainly unfair to defendants giving evidence on their trial. The quantity of questions by the Judge was obviously excessive as the aggregate number of questions by the counsel for the prosecution and for the defence was 847, but the Judge asked no less than 495, so virtually taking the case out of the hands of counsel to a large extent." The summing up was also defective so the conviction was quashed. The sordid facts of the case which merely involved the question whether a seaman had had his money's worth out of two prostitutes who were indicted for larceny are immaterial. But it may well be that it created a record in judicial interruption.

Channel Islands

The position of the Channel Islands is unique at the present time, as being the only British territory occupied by the Nazis. They should possess therefore, an exceptional interest to other

parts of the Empire. Accordingly it has been thought desirable to prepare a symposium describing the life of the Islanders which includes a survey of their constitutional position. This has been admirably accomplished by a body described at The Channel Islands Study Group, in a small volume with the title "Nos Iles" which may well become a useful and reliable work of reference.

One chapter is devoted to a political development of the Islands and describes the extent of the self-government which they have possessed for centuries. It is true that they can hardly be classified as Dominions, for they had no international status, but they had greater powers of self-government than any of the colonies. Their constitutions, for each Island has its own particular constitution, have not been given to them at any time by an Act of the Crown or by an Act of Parliament. These constitutions are both home-made and *sui generis*. Through centuries they have enjoyed the protection of English Armed Forces, but only indirect control has been exercised over their affairs and generally speaking, they constitute a notable example of freedom under democratic forms of government. As far back as we know anything of their political organization, they were privileged communities. The essence of their laws and customs was that the Islands should be permitted to preserve and develop their own law, which was the law of Normandy, undisturbed by their political severance from Continental Normandy.

A remarkable feature of the government of each of them has been the extent to which it has been undertaken voluntarily by the various members of the courts and legislatures. Whereas in every other British Dominion, the executive derives its authority from the Crown or its representative, who is constitutionally responsible to an elected assembly, the administration in each island is responsible to the States composed of the elected representatives of the people. Just as Parliament ceased to legislate for the Dominions long before their legislative sovereignty was recognized by the Statute of Westminster, so in practice the island legislatures have gradually assumed full legislative authority over the internal affairs of the respective islands.

The evacuation which took place in 1940 was carried out according to the respective decisions. Nearly the whole of the Island of Guernsey departed, including nearly all the school children with their teachers. Only about one-fifth of the people of Jersey left and there was no systematic evacuation of the schools. Scarcely a soul left Sark. In the case of Alderney, evacuation was complete. The whole of the population number-

ing about 1,400 was evacuated en bloc to Britain on June 13, 1940 under the protection of Brigadier French, who has just received from the University of Oxford, the honorary degree of D.C.L. in recognition of the ability with which he carried out such a difficult undertaking. The decision was reached by the votes of the Islanders and although they have been scattered throughout Britain, they remain a community and a voluntary relief committee of ordinary folk has had full power to act in the interests of the people by postcard vote taken from all adult refugees. It can be justly claimed that "the temporary uprooting of the government and the whole population of this self-governing community is undoubtedly a unique incident in the history of the British Empire."

The object of this publication is to provide a factual basis upon which it is possible to consider the developments necessary when the Islanders are once again able to return to their Islands. It is certain that there is no possibility of anything in the nature of a federation but the suggestion is made that a small Channel Islands Council may be set up consisting of representatives of the States of Jersey, Guernsey, and possibly, Alderney. This Council would employ the minimum office staff and would have full administrative control of the common services. Before any given service is set up, the Council would draft the necessary legislation to be submitted to the States of each Island. As a further development it is suggested that it may be advantageous to maintain a permanent Channel Islands Office in London.

Future of the Permanent Court of International Justice

A report which has just been laid before Parliament upon the maintenance of the Permanent Court of International Justice provides an interesting postscript to the comments of the Canadian and American Bar Associations contained in the report on the International Law of the Future (22 Can. Bar Rev. 356).

For twelve months an informal inter-Allied Committee of representatives of Governments in London have been considering the future of the Permanent Court. They were appointed by their Governments with the understanding that their conclusions were not in any way to be binding but merely to provide an advisory report. The Governements represented were Belgium, Canada, Czechoslovakia, Greece, Luxemburg, Netherlands, New Zealand, Norway, Poland and the French Committee of National Liberation, under the chairmanship of Sir William Malkin, legal adviser to the Foreign Office. Unfortunately, the representative

of Canada, Mr. D. M. Johnson, was only able to attend the first two meetings owing to joining the Canadian Forces so that he could not take part in the preparation of the report.

The Committee based their conclusions on the assumption that an International Court in some form will be required in the future. They found, as the Bar Association Committee did, that on the whole, the Statute of the Court has worked well and should be retained as a general structure for the future. Whatever may be decided about the exact form, they recommend that a new international agreement will be needed and that the authority of the Court should be derived directly from the Governments concerned rather than any organic connections with any future international organization. The Association's Committee rather unexpectedly take the alternative point of view especially having regard to the discussions which took place in Philadelphia about the autonomy of the International Labour Organization. Surely the independence of a great tribunal is a matter of fundamental principle surpassing in importance any reasoning which may be used in support of a body like the I.L.O.!

The constitution of the Court could as hitherto, consist of "a body of independent Judges, elected regardless of their nationality from amongst persons of high moral character who possess the qualifications required in their respective countries for appointment in the highest judicial offices, or are jurisconsults of recognized competence in international law." The qualifications of the judges as regards judicial standing, academic and forensic attainments, political, administrative or diplomatic experience should not be laid down in any way but must be left to the judgment of those responsible for nomination and election. Similarly, it is regarded as essentially inconsistent with the principles of electing the best candidates that there should be any system directed to securing permanent representation of certain countries or groups of countries. The Committee also considered that no attempt to secure the representation of particular legal systems should be obtained. On the other hand, if judges are chosen with different types of mind and methods of legal thought, the Court would in fact become representative.

On the point of the number of judges the Committee think it should be reduced from fifteen to nine exclusive of the ad hoc judges whose appointment is recommended as a means of spreading interest in the Court. They would be nominated by the Nations party to the Statute and would be supplementary to the appointed judges though available when required to make up the number.

The Committee are in favour of continuing the existing tenure of office for nine years but regard it as a disadvantage that all judges retire at one time. They propose as a substitute that one-third should go out of office every three years.

On the age of retirement their recommendation that 72 would be the minimum and 75 probably preferable, may be regarded as a tribute to the value of advancing years to the judiciary, though some people may doubt whether it will provide the progressive outlook necessary for a body like the International Court.

Upon the jurisdiction of the Court it is proposed that no country should be permitted to have recourse to its services which is not a party to the Statute. Political matters should be debarred; only those which are really "justiciable" should be referred to the decision of the Court. Its decisions would not necessarily be compulsory. Countries might agree on their own initiative to make any decision binding or to accept the Court's jurisdiction to give advisory opinions. The right to ask for such an opinion might be extended to all international associations of an inter-State or inter-Governmental character possessing the necessary status, and to any two or more States acting in concert. The opinion should be obtained on the basis of a definite question and an agreed set of facts. Any request which did not comply with these conditions might be rejected by the Court.

On the whole, the existing rule that French and English are the official languages finds favour though rules of court may be made allowing translations or interpretations from one language to another in the course of the proceedings. Similarly the present method of producing judgments is satisfactory and should be maintained, as well as the majority rule even if there is only a majority of one. Dissenting judgments are regarded as of great value and should be retained when it would remain open to any two or more judges to combine in a common judgment. There would continue to be no appeal from the decisions of the Court. It is not regarded as desirable that the Court should act as a Court of Appeal from local or regional tribunals administering international law. There is however, a proviso to the latter recommendation that some sort of appellate jurisdiction might be desirable from tribunals dealing with the questions analogous to those before the Mixed Arbitral Tribunals set up after the last war, so as to secure uniformity of the jurisprudence in the interpretation and application of the relevant provisions of the Peace Treaties. This appeal would not be given as direct but in some form of opinion in matters of treaty interpretations or international law

and would require regulation by the instruments setting up the tribunals rather than by the Statute of the Court. Finally the budget would include the estimate for the expense attached to the maintenance of the Court so that it would not be dependent upon any other organization.

It will be appreciated that Sir William and his colleagues have produced a valuable report which may well provide a suitable basis for general agreement and action by the Governments of the Allied Nations and any who care to join with them.

Canada finds a Flaw

The office of Attorney-General has existed for something like five hundred years. Originally he dealt with common law and the Solicitor-General with chancery. In modern times it has been generally assumed that the Solicitor-General in case of need can act as deputy for the Attorney-General. In fact, however, there is no statutory provision to that effect. In particular there is nothing in the Criminal Appeal Act 1907 (7 Ed. VII, c. 23, s. 1 (6)) requiring the certificate of the Attorney-General for an appeal from the Court of Criminal Appeal to the House of Lords. When the Attorney-General was out of the country last year, a Canadian convicted of murder wished to appeal and it was necessary to wait for his return before action could be taken in the matter. The Canadian authorities in this country who had the matter in hand were naturally concerned to find such an obvious flaw not merely in the law but in any sound method of administration. The Solicitor-General refused to act as had he done so the man might well have said that he had not had his statutory rights.

There are other cases in which at present only the Attorney-General can take action so he has introduced a bill which is now passing through Parliament to give authority to the Solicitor-General to act in his absence or sickness or in any matter in which the Attorney-General might have a personal interest.

A similar state of affairs has existed in Scotland and Northern Ireland so that the Bill makes analogous provisions in respect to the Lord Advocate and the Attorney-General for Northern Ireland.

On the same day as this Bill was before the House of Commons Macnaghten J. made an observation in the case of the trial of a Canadian soldier for armed robbery which deserves to be quoted for its bearing upon the conditions, giving cause for its introduction: "In some respects it would be better for offences by Canadian soldiers to be dealt with by Canadian courts-martial. In my

experience there is a great reluctance by juries to convict Canadians and a natural reluctance on the part of any Court to inflict punishment upon Canadian volunteers."

A Memorial Service

While customs are changing in connection with death and its accompaniments the Benchers of the Inns of Court retain the tradition of memorial services for their distinguished members. The destruction of Gray's Inn Chapel and the Temple Church necessitates the use of Lincoln's Inn Chapel. Although Lord Atkin had been on three occasions Treasurer of Gray's Inn, the tribute to his memory had to take place there, at a time when the pilotless planes had had some effect upon the surroundings. As I took the usual route from the Temple through the Law Courts I found the path diverted owing to the debris due to the effect of one of them which, falling early in the morning, upset the cause list for the day.

Lincoln's Inn Chapel is a building on a first floor. Around it are the sand bags which remain from the earlier instalment of air raid precautions and still have some use under these new conditions. A few of the windows are boarded up but there remains a considerable expanse of glass. The feature of the effect of these planes is the extent to which they break glass. The range of blast is considerable. Unless one has seen the piles of fragments of glass of all sizes it is almost impossible to conceive how much glass there is either in a row of residences or a block of business premises.

In spite of the vulnerability of the Chapel and although the "alert" and "all clear" had been sounding off and on all the morning and afternoon there was a good gathering ranging from the Lord Chancellor through all ranks in the legal profession. The Benchers of the host Inn and those of Lord Atkin's own Inn were represented in force as well as the Inner and Middle Temples. Societies such as the Medico-Legal Society and the Society of Comparative Legislation of which he had been President and Chairman respectively sent their representatives. They showed that Lord Atkin had allied interests and demonstrated the breadth of his legal mind. His influence upon English Law is to be found in the volumes of the Law Reports and will be appreciated more perhaps in the future for his clear ennunciation of principles, especially as they affected the liberty of the subject, did not always find at once acceptance among his colleagues. He had a fine mind and a great heart. It was as the possessor of the latter

that he was known best among his own people in the village of Aberdovey in North Wales from which he took his title. It is good to maintain such tributes to the qualities of mind and character which are upholding Great Britain in its hour of trial.

MIDDLE TEMPLAR.