

## FROM AN ENGLISH OFFICE WINDOW

*Lawyers off Duty*

Lawyers attached to Canadian military headquarters in London have had a pretty strenuous time lately so I was very glad to find some of them having, if not a rest, at least a change of occupation on Christmas Eve (Sunday afternoon). They, like so many other good fellows in the Forces from overseas, were sowing seeds of kindness, in this case in the wards of a large Children's Hospital in the centre of London. Instead of having a binge on their own account, Colonel Anglin and Colonel K. G. Morden in company with members of their staff, had decided to give presents and ice cream of which, owing to war-time restrictions some of the children did not even know the existence, to the children in its care. The wards were gaily decorated and the uniforms attracted the attention of the children and their visiting parents and friends who appreciated the cheery greetings of their Canadian benefactors.

The square in which with three others the Hospital is situated, is quite near Gray's Inn and passing by, it was possible to notice the desolation of that area. Gray's Inn suffered badly in the days of 1940 and 1941, but flying bombs did further destruction within the Inn and V.2 has recently done more damage quite close to it. Nevertheless whatever reconstruction may be found necessary around, the precinctal charm of the Inn will be retained as of yore.

*Uniformity of Legislation*

Lord Bennett represented the Canadian Bar Association at a Luncheon on December 18th, to commemorate the Jubilee of the Society of Comparative Legislation, which brought together a notable assembly of distinguished lawyers and others interested in its object of "promoting knowledge of the course of legislation in different countries more particularly in the several parts of His Majesty's Dominions and in the United States." The current number of the Society's JOURNAL gives some account of the developments of the work and the men who have taken part in it.

The Lord Chancellor, Viscount Simon, in proposing a toast of good wishes to the Society paid a felicitous tribute to the memory of its founder Sir Courtenay Ilbert. "To him and Lady Ilbert" he said, "in the days when I was quite unknown, struggling at the Bar and about to enter Parliament, I owe much for they

showed me more warm hearted kindness than I can ever describe." Further references to Sir Courtenay's work showed how much his influence contributed to the Lord Chancellor's career and gave a personal touch to the proceedings which was much appreciated by those present.

Lord Simon followed up this reference by putting forward a proposal closely allied with Sir Courtenay's life work and at the same time germane to the objects of the Society. Referring to the rigid rule of judicial interpretation which requires close adherence to the actual context the Lord Chancellor suggested the attachment to complicated measures of a short prefatory document which could explain the purpose and intended effect of the bill and be printed as an introduction to it. The document would not have equal authority with the text but could be, as he said "like the Apocrypha for edification rather than literal interpretation."

Lord Macmillan in responding as Chairman of the Executive Committee on behalf of the Society referred to its influence in contributing to uniformity of legislation. Lord Bennett took up the point by referring to the work of the Canadian Commissioners on Uniform State Laws in proposing the health of the President, Mr. S. M. Bruce, the High Commissioner of Australia, and obviously envisaged the possibility of establishing a body which might do work of a similar character to cover all the Dominions and possibly some of the legislative bodies in the colonies.

### *Law and Progress*

The Master of the Rolls, Lord Greene, devoted the Haldane Lecture to the subject of "progress" in relation to law and defined the word as covering those matters of change and development in our institutions and methods. The lecture has been published in a series of issues of the *Law Journal* (October 29th, November 4th and 11th). It is so full of thoughtful reasoning upon subjects which are of interest to lawyers throughout the English speaking world that it is worth while to make an attempt to epitomise at least its main conclusions even if some injustice is done to a weighty pronouncement.

Lord Greene recognized that the problems with which we have to deal in these days in order to secure the peace, order and good government of this realm are of unprecedented complexity. The whole background of the national life is changing. At the risk of undue simplification he attributed this largely to mechanization although, of course, the awakening of the social conscience

and other factors play their part. It would be generally admitted that this problem is experienced in many departments of the national life. How it is to be solved was not the lecturer's concern but he devoted himself to a consideration of the adequacy of the legislative machinery for effecting the solution. In modern conditions the legislative machine is inadequate to the strain put upon it.

Hence there arise three methods of relief. The first is delegated legislation, when an Act lays down broad principles and a department makes regulations which have the force of law. The second is of an entirely different character when an Act gives power to a department to perform not a legislative but an executive act for the purpose of carrying out the policy of legislation. The Minister in fact, becomes a legislator. The third type of legislation is the establishment of special tribunals.

The relationship of the judiciary to these three developments was the main purpose of the lecture. It is the business of Parliament to control the first development though the jurisdiction of the courts ought to be jealously preserved to decide whether a piece of delegated legislation is or is not within the legislative power committed by Parliament to the Department. In this connection the Master of the Rolls referred to "a vicious type of provision" where Parliament enacts that regulations made by a Minister shall be deemed to be *intra vires* whether they are or not. "Let us hope" he added "that we have seen the end of this monstrosity. If it raises its head again, it should be attacked and destroyed by all who value liberty and the rule of law and are not prepared to commit to Government Departments what is, in practice, the right to fix the limits of their own legislative power."

As to the powers of Ministers in the exercise of discretion in carrying out schemes of large scale planning the judiciary has no concern provided that they keep within the bounds of their statutory powers. In this connection, however, the establishment of fact finding tribunals often becomes necessary and Lord Greene expressed a warning that the tribunal should not consist of an official of the Ministry concerned, who must find it very difficult not to be affected by the departmental point of view. Accordingly he would prefer to see tribunals of this character selected from a panel of suitable persons with, perhaps, a person of legal experience as chairman. An official might act as assessor since he would have a knowledge and experience of the subject which should be made available to the tribunal.

Finally Lord Greene dealt with the position of special tribunals and in doing so referred to the proposed change in respect to workmen's compensation. Since the Government propose that it shall become a social service and the right of the workman will be a claim against a centrally administered fund, there will be a complete change in the whole nature of the legal rights surrounding the accident. The administration of the fund will become a state concern just as much as pensions or health insurance. The lecturer associated himself with those who are agreed that "this is no business for the courts of law." He emphasized the fact, however, that there must remain an appeal to the courts on points of law.

These special tribunals tend to become more informal and that is probably to the advantage of the applicant, so that there is no need for him to be represented by a professional advocate, though he may well require the assistance of a relative or friend.

In meeting the objections to these special tribunals Lord Greene pointed out that if all the work which will have to be done in connection with pensions and similar matters had to come before the courts of law it would be impossible to find the very large increase necessary in the number of judges. In conclusion the lecturer asked for the acceptance of the following broad principles:

"First it is only certain classes of questions which are suitable for submission to a special tribunal to the exclusion of the court.

"Secondly, in deciding whether a case falls within these classes it is relevant to consider the number of individuals likely to be affected and their probable pecuniary position, the necessity or otherwise of providing a speedy and inexpensive procedure and one affording opportunities for decentralisation, whether the questions likely to arise are predominantly questions of fact, and whether expert knowledge and experience are desirable for their decision, and the extent to which the jurisdiction is to be based on discretion rather than on fixed rules and precedent.

"Thirdly that in all save exceptional cases there should be a right of appeal to the courts on questions of law.

"Fourthly in no circumstances should the power of the courts to restrain a special tribunal from exceeding its jurisdiction be taken away.

"Lastly: each particular piece of legislation should be considered in relation to its special character in the light of the foregoing principles."

MIDDLE TEMPLAR.

*Canadian Lawyer Acts as Marshal to Sir Norman Birkett*

When going the South Eastern Circuit in December, Sir Norman Birkett, the Judge of Assize, took another Canadian lawyer as his Marshal to the Royal Borough of Kingston on Thames.

Lieutenant Stanley C. Biggs of the Queen's Own Rifles of Canada had been in action from "D" Day to August 30th when he was wounded. He was spending his convalescent leave at the home of Sir Norman from December 1st to the 9th and accompanied the Judge on Circuit.

Lt. Biggs is in partnership with his father in Toronto in the firm of Biggs and Biggs, and is proud of the fact that he belongs to the fourth generation of his family to take up the law.

He is a Bachelor of Arts and Laws and was called to the Ontario Bar in 1939.

He opened the Assizes in the time-honoured words, swore the witnesses, and closed the Assizes.

The opening words are still—

"All persons having anything to do before my Lords the King's Justices, draw near and give your attendance. God save the King, and My Lords the King's Justices".

This is the third Canadian lawyer to go with Sir Norman on Circuit, and shows what no Canadian lawyer can doubt, the regard and affection of Sir Norman for Canada and Canadian lawyers.

It is also a good thing for Canadian lawyers to see English justice being administered, and to take some part in the ancient ceremonial.

The High Sheriff of the County of Surrey happened also to be a Canadian, and Lt. Biggs had actually been in the High Sheriff's house in Canada, so a Canadian atmosphere pervaded the Assizes throughout.