## FROM AN ENGLISH OFFICE WINDOW

*Survivorship and the Atomic Bomb*

The course of *Re Grosvenor, Peacy* v. *Grosvenor* (see 23 Can. Bar Rev. 70), through the courts has not been one to inspire confidence in the administration of law. It has even changed its name and ended in the House of Lords as *Hickman and others* v. *Peacey and others* (61 Times Law Reports 489). The original decision of Cohen J. was reversed in the Court of Appeal by two to one so that judicial wisdom was equally divided subject to the difference in weight of the membership of the two tribunals. The House of Lords consisting of five members, by a majority of three to two have reversed the decision of the Court of Appeal. But one of the minority was the Lord Chancellor, Lord Simon. So once again it is difficult really to assess upon which side is the weight of judicial opinion. At all events the net result justifies the layman's criticism of the uncertainty of law.

The main point at issue, which rests upon the interpretation of s. 182 of the Law of Property Act 1925, had undoubtedly been magnified by the 'incidents' of attack from the air. Great Britain has been happily freed from them but it is worth while to consider whether the atomic bomb has made a contribution to the solution of the legal problem. From the published accounts it would appear that whole areas have been obliterated at one time and it may be surmised, almost to the extent of certainty, that there were simultaneous deaths among the inhabitants. But that certainty is considerably diminished if it is to apply to any two out of two hundred thousand. Unless there is definite evidence then there is uncertainty and the provisions of the Act come into operation as they are applicable when "two or more persons have died in circumstances rendering it uncertain which of them survived the other or others." Lord Macmillan supported this contention by saying that in his opinion the legislature "in employing the word 'uncertain' in the section which the House has to construe, was not thinking of the kind of uncertainty with which the law has to be content, but was using the word in its ordinary acceptation as denoting a reasonable element of doubt" (*ubi sup.* at p. 493).

To this, Lord Porter, who was also in the majority, added that "the law should avoid too great subtlety in interpretation and should follow the common sense view" (*ubi sup.* at p. 497). The course of this case may not unfairly be given as an example of the legal subtleties in which a matter, in its essence within the

judgment of the ordinary man and within his personal experience in time of war, may become involved in the courts of law.

*English Criminal Legislation*

The Pilgrim Trust record in their latest report a grant of "an exceptional nature" to assist a piece of research into the influence of Parliament in the development of modern ideas of crime and its treatment. This is to be accomplished by an exhaustive examination of all the parliamentary publications of any kind and all the debates on the subject so far as they are available, over a period of more than two hundred years. Dr. Radzinowicz gave some account of his undertaking in the Cambridge Law Journal (vol. viii p. 181) when he estimated that the material comprises about 1,250 reports of the different Commissioners of Inquiry, about 3,000 accounts and papers, 800 annual reports and about five thousand items taken out of the eleven hundred volumes of the Parliamentary debates. It is proposed that the ultimate product shall be presented in three main periods 1760—1830, 1830—1895 and from 1895 to the present day. The first section is under way and should be ready for publication in three substantial volumes in about three years' time. To the production of this contribution to English legal history, the Pilgrim Trust, of which Lord Macmillan is chairman, have felt justified in making an exceptional benefaction.

*Legal Aid*

The facilities which have been provided for men in the Forces to obtain legal advice have done much to popularize a service for which before the war there was a growing demand. The historical development of Legal Aid is admirably described in a book which has just been published by Mr. Robert Egerton, who to his practical experience in one of the principal centres in London at Cambridge House, Camberwell, has added a careful study of the work which has been done not only in Great Britain but also in other countries. The conclusion, which Mr. Egerton reaches, is that "improved legal aid is long overdue and the general lines which it should take are exceptionally clear". It is not too much to say that under present conditions many people are unable to obtain their legal rights. "Denial of justice through poverty" as Mr. Egerton rightly observes "is utterly inconsistent with out private conception of democracy and if it is not brought to an end by legal aid the only result will be to accentuate the present tendency to avoid normal legal procedure altogether".

While Mr. Egerton's book was going through the Press the Lord Chancellor appointed a strong committee to report upon the existing facilities and make recommendations for their modification and improvement so that legal aid is available to poor persons in the conduct of litigation in which they are concerned, whether in civil or criminal courts. Their report has been presented and is available in a convenient form (H.M. Stationery Office Cmd. 6641 price 9d.) for the information of the general public. It may be added that it may quite well be found to be useful in any jurisdiction analogous to that of the United Kingdom. All that can be done here is to give a brief conception of their conclusions.

Dealing first with the Criminal Court the Committee laid down the principle that legal aid should be granted in all cases where it appears to be desirable in the interests of justice. "In the term 'all cases' " they added "we include the parties on both sides in civil cases coming before the criminal courts". The evidence showed that some of the tribunals, especially those of first instance do not even exercise their existing powers to grant aid to the prisoner. In this connection the Committee recommend that the cost should be borne by the State and not by the local authorities. A recent example was provided by the trial of the notorious "Lord Haw-Haw". The cost fell upon the ratepayers of London because the trial happened to be held there although it was obviously a State matter. Incidentally Mr. Theobald Matthew the Director of Public Prosecutions has stated that the maximum professional costs that would be allowed were £12. 3s. (say fifty dollars) for the defending solicitor and a little more than double that amount (£27. 5s.) for all the counsel concerned in the defence.

As regard civil actions the Committee recommended an income limit and an ingenious method of calculating a man's actual ability to meet the expenditure involved in litigation. The Committee also make detailed proposals as to the method of calculating the remuneration to be paid to solicitors and counsel. Their main proposal of public interest is the method of organizing the service and for this they propose to make use of the Law Society as the professional organization of solicitors, which has done most valuable work in this department on an extensive scale during the war. It possesses the necessary regional organization so that facilities can be provided all over the country. Full time staff would be needed in large centres of population while in others attendance would be arranged at

convenient times by local Committees. There has been some criticism of the proposed finance by means of a block payment to the Law Society but the Treasury can be relied upon to protect the interests of the taxpayer. A more stimulating criticism is that supply will create demand. In a broad sense the statement will probably be justified though that may not be a point of criticism. The professional auspices under which the work is done is a protection against frivolous litigation.

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